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Serial No.	Issue	Year	Name of the Parties/Case No and Citation	Key Word(s)	Short Ratio
1.	14	2020	A.T.M. Azharul Islam. Vs. The Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh. 14 SCOB [2020] AD (SYED MAHMUD HOSSAIN, C. J)	Crimes against Humanity; Genocide and War Crimes; Law of evidence; Hearsay evidence; Abetment; Form of charge in case of mass victims; Probative value of an uncrossed deposition;	The cardinal principle of assessment of evidence is that the entire evidence is to be considered as a whole and then a decision is to be arrived. There is no scope to consider one statement made in cross-examination in isolation. It is the cardinal principle of law of evidence that hearsay evidence is to be considered together with circumstances and the material facts depicted. If hearsay evidence has probative value then it is admissible in evidence. In order to incur criminal liability in a case of crime against humanity, the accused himself need not participate in all aspects of the criminal conduct. It is of the essence of the crime of abetment that abettor should assist the principal culprits towards the commission of the offence. Participation de facto may sometimes be obscure in detail, it is established by the presumption Juris et de jure that actual presence plus prior abetment can mean nothing else but participation. When a charge involves hundred of victims, it is not at all necessary for the prosecution to narrate the names of all the victims. In a criminal case the prosecution must prove the charge brought against an accused beyond any shadow of reasonable doubt. Criminal cases are not like civil cases. In criminal case the accused may only take the plea of not guilty and the burden is entirely upon the prosecution to prove its case. Cross-examination is not also necessary on the entire deposition of a witness as it may damage the defence case. Non-cross-examination on a certain fact would not make the deposition of a witness on that point admitted facts. .
2.	14	2020	Palash Chandra Saha Vs. Shimul Rani Saha and others. (MUHAMMAD IMMAN ALI, J) 14 SCOB [2020] AD (MUHAMMAD IMMAN ALI, J)	Suit for declaration, Adoption;	The adoptive father of the child to be adopted must belong to the same caste and that adoption would be valid if they belong to different sub-division of the same caste. According to Hindu Law any act done in contravention of the Hindu texts which are in their nature mandatory cannot be said to be lawful by applying the principle of factum valet. Hence, the principle of factum valet is ineffectual in the case of adoption in contravention of the provision of legal texts. Even if he was accepted as a family member, the legality of the adoption must be considered. The provision of

					Hindu Law is clear that there cannot be adoption across castes. In other words, a child from one caste cannot be legally adopted by a member of another caste.
3.	14	2020	Md. Abul Kaher Shahin Vs. Emran Rashid and another (Hasan Foez Siddique, J) 14 SCOB [2020] AD	Dishonour of cheque, Section 118,138 of The Negotiable Instruments Act, 1881 ;	Once there is admission of the execution of the cheque or the same is proved to have been executed, the presumption under section 118(a) of the Act is raised that it is supported by consideration. The category of "stop payment cheque" would be subject to rebuttal and hence it would be an offence only if the drawer of the cheque fails to discharge the burden of rebuttal. The accused person can prove the non-existence of a consideration by raising a probable defence. If the accused discharges the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the complainant. He will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to grant of relief on the basis of negotiable instrument . Where the amount promised shall depend on some other complementary facts or fulfillment of another promise and if any cheque is issued on that basis, but that promise is not fulfilled it will not create any obligation on the part of the drawer of the cheque or any right which can be claimed by the holder of the cheque.
4.	14	2020	Abul Kasem Md. Kaiser Vs. Md. Ramjan Ali and others. (MIRZA HUSSAIN HAIDER, J) 14 SCOB [2020] AD State Vs. Abu Hanifa @ Hanif Uddin (MIRZA HUSSAIN HAIDER, J)	Pre-emption, Extinguishment of Co-sharership;	The 62 DLR case has not overruled the contention that 'only by a partition suit or partition deed the co-sharership is extinguished'. So in this case by separating the Jama the pre-emptor and/or his predecessor having already lost her/his character of co-sharership in the case jote so the pre-emptor is no more a co-sharer and as such his right to pre-empt as a co-sharer does not exist anymore Not only separation of Jama/Khatian by a party will cause him to cease to be a co-sharer in the jama but co-sharership will also be ceased by a final decree in a partition suit or by a registered deed of partition. That means either of the two will cause a person to cease his co-sharership in the case jote. The appellant cannot take the plea of non-service of notice upon the other party once he has taken benefit of such mutation or separation of "Jama". Such plea,if any, can be taken only by the party affected by it or to whose disadvantage the same has been obtained and upon whom the notice was required to be served. But not the person at whose prayer separation has been made and who takes the benefit of such separation.
5.	14	2020	Firoza Noor Khan and others Vs. Raisa Aziz Begum and others. (Zinat Ara, J) 14 SCOB [2020] AD	Khas Mohal property of the Government; Article 104 of the Constitution; Complete Justice;	Any property owned by the Government is the property of the People's of the Republic of Bangladesh and the citizens of this country are the actual owners of such property. Therefore, no one can dispose of valuable Government properties at his/their sweet will to anyone else unlawfully. The power of this Court under article 104 of the Constitution is an extensive one though it is not used often or randomly. It is generally used for doing complete justice in any cause or matter pending before it in rare occasions in exceptional or extra-Ordinary cases for avoiding miscarriage of justice.. Article 104 widens our hands so that this Division is not powerless in exceptional

					matters. The matters (appeals/CPLA) in our hands are matters requiring exercise of this power, to save a valuable property of the Government from the clutches of greedy land/property grabbers, that too with the active collaboration and help from the Government Officials.
6.	13	2020	Govt. of Bangladesh Vs. Abdul Mannan & ors. 13 SCOB [2020] AD (SYED MAHMUD HOSSAIN, C. J)	Abandoned property, suit for specific performance contract;	In the suit for specific performance of contract the declaration of the suit property is not an abandoned property, is beyond the scope of the suit and such declaration has no legal value at all. In a suit for specific performance of contract the only issue to be decided whether the contract was genuine or not and as such, though the Government is made a party to a suit for specific performance of contract as a requirement of law it is not bound by the decree.
7.	13	2020	Mahbubul Anam Vs. Ministry of Land & ors. (MUHAMMAD IMMAN ALI, J) 13 SCOB [2020] AD (MUHAMMAD IMMAN ALI, J)	Cancellation of lease, preservation of ecological balance and protection of natural resources;	Cancellation of long term lease granted by the government for the purpose of constructing hotels in the hotel/motel zone of Cox's Bazar: Dismissing the review petitions, the Court directed that all leases within Jhilanja Mouza of Cox's Bazar granted after 19.04.1999 be cancelled in the same way as those of the writ-petitioners and any constructions made thereon be demolished; the leaseholders shall be compansated for their loss due to such cancellation/demolition. It was further directed that henceforth no lease shall be granted within Jhilanja Mouza or any area which has been classified as ecologically critical area.
8.	13	2020	State Vs. Abu Hanifa @ Hanif Uddin (MIRZA HUSSAIN HAIDER, J) 13 SCOB [2020] AD State Vs. Abu Hanifa @ Hanif Uddin (MIRZA HUSSAIN HAIDER, J)	Section 84 of the Penal Code and plea of unsoundness of mind;	On a plain reading of the aforesaid provisions of law and on scrutinizing the materials on record, specifically the Medical reports (Exhibits-A,B,C and D), submitted by the DWs we have already found that the defence has been able to prove that the accused-respondent was of unsound mind from 22.6.1999 i.e. 8(eight) months after the date of occurrence (13.10.1998) but failed to prove the same, prior to that date. Since the defence failed to prove its plea of unsoundness of mind of the accused-respondent, at the time of commission of the offence on 13.10.1998, as required under section 84 of the Penal Code and section 105 of the Evidence Act by providing sufficient evidence, he cannot get any benefit under section 84 of the Penal Code nor under Chapter XXXIV of the Criminal Procedure Code. Plea of insanity or of unsoundness of mind of the accused-respondent being not prima facie found, the Court is not obligated to take recourse to the provisions as laid down in Chapter XXXIV of the Criminal Procedure Code.
9.	13	2020	The State Vs. Abdur Razzak & ors. (Hasan Foez Siddique, J) 13 SCOB [2020] AD	Absorption and doctrine of legitimate expectation;	1. The legitimate expectation would not override the statutory provision. The doctrine of legitimate expectation can not be invoked for creation of posts to facilitate absorption in the offices of the regular cadres/non cadres. Creation of permanent posts is a matter for the employer and the same is based on policy decision. 2. While transferring any development project and its manpower to revenue budget the provisions provided in the notifications, government orders and circulars quoted earlier must be followed. However, it is to be remembered that executive power can be exercised only to fill in the gaps and the same cannot and should not supplant the law, but only supplement the law.

					3. Before regularization of service of the officers and employees of the development project in the revenue budget the provisions of applicable "Bidhimala" must be complied with. Without exhausting the applicable provisions of the "Bidhimala" as quoted above no one is entitled to be regularised in the service of revenue budget since those are statutory provisions. 4. The appointing authority, while regularising the officers and employees in the posts of revenue budget, must comply with the requirements of statutory rules in order to remove future complication. The officers and employees of the development project shall get age relaxation for participation in selection process in any post of revenue budget as per applicable Rules. 5. A mandamus can not be issued in government and its instrumentalities to make anyone regularized in the permanent posts as of right. Any appointment in the posts described in the schedule of Bangladesh Civil Service Recruitment Rules, 1981, Gazetted Officers (Department of Live Stock Service) Recruitment Rules, 1984 and Non-gazetted Employees (Department of Live Stock Service) Recruitment Rules, 1985 bypassing Public Service Commission should be treated as back door appointment and such appointment should be stopped. 6. To become a member of the service in a substantive capacity, appointment by the President of the Republic shall be preceded by selection by a direct recruitment by the PSC. The Government has to make appointment according to recruitment Rules by open competitive examination through the PSC. 7. Opportunity shall be given to eligible persons by inviting applications through public notification and appointment should be made by regular recruitment through the prescribed agency following legally approved method consistent with the requirements of law. 8. It is not the role of the Courts to encourage or approve appointments made outside the constitutional scheme and statutory provisions. It is not proper for the Courts to direct absorption in permanent employment of those who have been recruited without following due process of selection as envisaged by the constitutional scheme.
10.	12	2019	Ashuganj Fertilizer & Chemical Com. Ltd. & ors. Vs. Md. Abu Sufian Bhuiyan & anr. (Syed Mahmud Hossain C.J) 12 SCOB [2019] AD 1	Dismissed from service, termination simpliciter	The orders of termination were not termination simpliciter. Consequently, this is the outcome of arbitrary exercise of power in a malafide way and as such, the High Court Division was justified in making the Rule absolute declaring the orders of termination to have been passed without lawful authority and to be of no legal effect. There was an inquiry about the appointment of the writ-petitioner and pursuant to the said inquiry, the writ-petitioner were terminated from service. Therefore, it cannot be said that the writ-petitioner were terminated from service and in fact, they were dismissed from service in the garb of termination
11.	12	2019	Mir Showkat Ali & ors. Vs. Md. Morsalin Khan & ors. (Muhammad Imman Ali, J) 12 SCOB [2019] AD 8	Authority of the Executive Committee of the Orphanage to deal with property;	The Management/Executive Committee of the Orphanage had no authority to deal with the land other than for the purpose stipulated in the indentures. Those persons at the helm of the affairs of the Orphanage could not arrogate to themselves the authority to transfer the title in the property, which they

					themselves did not have. The Orphanage was given the property on a short term lease, which was apparent from the lease deeds. As long as these lease deeds existed and as long as the terms were not altered by the executant of the deeds none had the authority to deal with the land other than the purpose for which the lease was granted.
12.	12	2019	BADC Dhaka & ors. Vs. Md. Shohidul Islam & ors. (Hasan Foez Siddique, J) 12 SCOB [2019] AD 23	Voluntary retirement of service;	After 10 years of their voluntary retirement and after receiving full financial benefits as offered the prayers for reinstatement cannot be termed as reasonable and fair. After having applied for voluntary retirement of service and taken the money it is not open to contend that they exercised the option under any kind of coercion and undue influence. Who had accepted the ex gratia payment or any other benefit under the scheme, could not have resiled therefrom. It became past and closed transaction. The writ petitioners having accepted the benefit could not be permitted to approbate and reprobate nor they be permitted to resile from their earlier stand.
13.	12	2019	Rashed Vs. The State (MIRZA HUSSAIN HAIDER, J) 12 SCOB [2019] AD 34	Dying declaration, section 32(1) of the Evidence Act 1872;	Dying declaration cannot be considered as the sole basis for conviction and awarding sentence to the appellant, specifically in the absence of any of the witnesses who were present in the hospital during the time when the alleged dying declaration was made by such a critically injured person who was under intensive care and not supposed to be in conscious. As such the finding of the High Court Division that 'the prosecution has clearly established the motive of the case and the oral dying declaration has also been supported by the medical evidence and other circumstances and materials on record' is not sustainable in law.
14.	11	2019	The Election Commission Bangladesh and another Versus Noruzzaman Sarker and others (MUHAMMAD IMMAN ALI, J) 11 SCOB [2019] AD 1	Election Disputes–Appropriate Forum.	Where the total number of votes cast in a centre exceeds either the total number of ballot papers issued to the centre or the total number of votes enrolled for that centre, or if during the counting of ballot papers a ballot box is found missing or it is snatched away or if the Presiding Officer makes glaringly contradictory reports as to the result of the counting of votes, without reasonable explanation, then the Election Commission need not wait for determination of the dispute by the Election Tribunal. But where no such thing has happened but allegation is brought after the declaration of the result then it is always desirable that dispute, if any, should go to the Tribunal for determination.
15.	11	2019	Haji Shamsul Alam Vs. Dr. Ashim Sarker & ors. (Hasan Foez Siddique, J) 11 SCOB [2019] AD 7	Section 4 of the Partition Act, 1893. Basic Pre-requisites for buy up.	It is observed that to get an order of pre-emption under section 4 of the Partition Act three condition are to be fulfilled, i.e. (1) the property must be dwelling house, (2) it must be the undivided family and then (3) the purchasers must file the partition suit. That is one of the basic conditions for applicability of section 4 of the Partition Act which has been expressly mentioned in the section is that the stranger transferee must sue for partition and separate possession of the undivided share transferred to him by the co-sharer. If the stranger moves execution application for separating his share by metes and bounds it would be treated to be application for suing for partition and it is not necessary that separate suit should be filed by such stranger transferee. In this case the defendant No. 5 appellant Shamsul Alam is the

					transferee of the land under partition and the suit has been filed by Dr. Ashim Sarker who is not the transferee and appellant did not pray for any saham as yet in the said suit for partition, so the prayer for buying up by the paintiff was not at all maintainable at the stage of the suit when the same was prayed for. The courts below have committed error of law in allowing the prayer for buying up.
16.	11	2019	The State Vs. Nurul Amin Baitha(absconding) and another (MIRZA HUSSAIN HAIDER, J) 11 SCOB [2019] AD 13	Conversion of conviction from special law to general law, Complete Justice u/a 104 of the Constitution	The High Court Division does not have authority to convert the conviction from special law to general law. The conversion of conviction from special law to a different law can only be done by the Appellate Division empowered under Article 104 of the Constitution to do "complete justice" in appropriate cases pending before it under Article 103 of the Constitution.
17.	10	2018	Bangladesh Rubber Industries & anr. Vs. Dine Ara Begum & ors. (SYED MAHMUD HOSSAIN, C. J) 10 SCOB [2018] AD 1	Dissolution of partnership	Having considered the cases cited above, we find that a deed of dissolution of partnership is not required to be registered under section 17 of the Registration Act because the share of a partner in a partnership is essentially moveable property notwithstanding that a part of the partnership property may be immovable.
18.	10	2018	Alhaj Dr. Chowdhury Mosaddequl Isdani Vs. Abdullah Al Munsur Chowdhury & ors. (Mirza Hussain Haider, J.) 10 SCOB [2018] AD 19	Persona Designata	In legal parlance the expression "persona designa" means a person who has been described in a statute or a legal instrument by his official designation, and his function may be judicial or may not be so. But if the function of the designated person is judicial in character then he is nothing but a "court" even though he is not described as a court but by official designation. The test is the power and function he has to discharge.
19.	10	2018	Md. Hafizuddin Vs. Mozaffor Mridha & ors. (Hasan Foez Siddique, J.) 10 SCOB [2018] AD 6	Basic Principles of Waqf	Three basic principles governed the waqf: the trust was required to be irrevocable, perpetual, and inalienable. Once property was declared waqf by its owner, the trust thereby created was irrevocable. It means (i) inalienable lands used for charitable purposes and (ii) pious endowments.
20.	10	2018	Kamal alias Exol Kamal Vs. State (MUHAMMAD IMMAN ALI, J.) 10 SCOB [2018] AD 12	Commutation of Sentence	On the question of commutation of the sentence, we are to take into consideration the heinousness of the offence committed in juxtaposition with the mitigating circumstances. It is by now established that in Bangladesh the sentence for the offence of murder is death which may be reduced to one of imprisonment of life upon giving reasons. It has been the practice of this Court to commute the sentence of death to one of imprisonment for life where certain specific circumstances exist, such as the age of the accused, the criminal history of the accused, the likelihood of the offence being repeated and the length of period spent in the death cell.
21.	9	2017	Bangladesh Vs. Md. Ataur Rahman & ors. 9 SCOB [2017] AD 1	Article 102 of the Constitution; Warrant of Precedence	Warrant of Precedence being arbitrary, irrational, whimsical and capricious is subject to judicial review: The High Court Division having considered the respective status and positions of different constitutional functionaries and the persons in service of the Republic rightly held that though impugned Warrant of Precedence is a policy decision of the Government yet in the absence of evidence of any discernible guidelines, objective standards, criteria or yardsticks upon-which the impugned Warrant of Precedence is ought to be predicated, we feel constrained to hold that the said Warrant of Precedence cannot shrug off the disqualification of being arbitrary, irrational, whimsical and

					capricious and is, therefore, subject to judicial review under Article 102 of the Constitution.&#65533;
22.	9	2017	Mohammad Zafar Iqbal & ors Vs. Bangladesh & ors 9 SCOB [2017] AD 25	Acquisition and Requisition of Immovable Property Ordinance, 1982, Section 3; Preservation of the memory of the martyrs; East Pahartali mass graveyard; Colourable exercise of power	The law gives the Deputy Commissioner to acquire any property if he is satisfied that the property is needed for public purpose. In the notice the Deputy Commissioner specifically mentioned the purpose for which the notice was served that it was for the public purpose of Baddyabhumi. This order clearly spelt out the actual existence of requirement for a public purpose within the meaning of section 3 of the Acquisition and Requisition of Immovable Property Ordinance, 1982. If the reason for the issuance of the notice of acquisition was not one contemplated by law, the initiation of the proceedings would be void. It is the Deputy Commissioner who is primarily the judge of the facts which would attract section 3 of the ordinance. This opinion cannot be replaced by any other authority.
23.	9	2017	Bangladesh Vs. Md. Mizanur Rahman 9 SCOB [2017] AD 37	The Code of Civil Procedure, 1908 Rules: 1 and 2 of Order XVIII; Pleadings	In the instant case, the defendant did not admit the case of the plaintiff and filed written statement denying the plaintiff&#65533;s claim that the suit property was an abandoned property, so it was the plaintiff who had the right to begin the hearing of the suit as per provision of rule 1 of order XVIII of the Code. Rule 2(1) of the Code has clearly provided that on the day fixed for hearing of the suit the party having the right to begin shall state his case and produce evidence in support of the issues which he is bound to prove, the other party shall then state his cause and produce his evidence (if any) and may then address the Court generally on the whole case. Therefore, there was no scope on the part of the plaintiff to avoid examination of witness and state the facts of the plaint at the hearing of the suit.
24.	9	2017	Rabeya Khatoon & ors Vs. Jahanara & ors 9 SCOB [2017] AD 40	Mohamedan Law of Bequest	Bequest by a Mohamedan to his heir of any quantum of property requires the consent of his other heirs after his death to be valid. But a bequest by a Mohamedan to any stranger (other than his heir) upto one-third of the surplus of his property which remains after payment of his funeral expenses and debts is valid and does not require consent of the heirs of the testator. Bequest to a stranger over and above one-third of the property of the testator which remains after payment of funeral expenses and debts of the testator requires the consent of the heirs of the testator after his death to be valid.
25.	9	2017	Bangladesh & ors Vs. Professor Nurul Islam & anr 9 SCOB [2017] AD 46	Meaning of right to life; Constitution of Bangladesh Articles 18(1), 31 and 32; Smoking and Tobacco Product Usage Control Act, 2005	No one has any right to endanger the life of the people which includes their health and normal longevity of an ordinary healthy person. Articles 31 and 32 of the Constitution not only means protection of life and limbs necessary for full enjoyment of life but also includes amongst others protection of health and normal longevity of an ordinary human being. It is the obligation of the State to discourage smoking and consumption of tobacco materials and the improvement of public health by preventing advertisement of tobacco made products. Though the obligation under Article 18(1) of the Constitution cannot be enforced, State is bound to protect the health and longevity of the people living in the country as right to life guaranteed under Articles 31 and 32 of the Constitution includes protection of health and longevity of a man free from threats of man-made hazards. Right to life under

					the aforesaid Articles of the Constitution being fundamental right it can be enforced by this Court to remove any unjustified threat to health and longevity of the people as the same are included in the right to life.
26.	9	2017	NTRCA & anr Vs. Lutfor Rahman & ors 9 SCOB [2017] AD 62	Show cause notice; Cancelling appointment	It is patent from the records that all the respondents went through the rigorous process of selection and were appointed in their respective post. They were served with notices cancelling their appointment without issuing any show cause notice. The respondents joined their posts and served accordingly for more than nine months at the time of filing their writ petition. We are of the view that without issuing any show cause notice the petitioners could not lawfully cancel the letter of appointment of the respondents.
27.	9	2017	Biman Bangladesh Airlines & ors Vs. Al Rojoni Enterprise 9 SCOB [2017] AD 66	Carriage by Air (International Convention) Act, 1966 Rule 29 of the first schedule Read with section 29 of the Limitation Act	The High Court Division committed an error of law in holding that the date on which carriage stopped was the date on which the carrier defendants admitted its failure to deliver its goods finally and offered payment of compensation in lieu of the goods. The time for limitation began to run from the expiry of 7 days after the date on which the goods ought to have arrived, that is, on 22.01.1999. Since the suit was filed on 24.05.2001 apparently the same was barred by limitation in view of special limitation provided in Rule 29 of the first schedule of the Carriage by Air (International Convention) Act, 1966 read with section 29 of the Limitation Act.
28.	9	2017	BGMEA Vs. Bangladesh & ors 9 SCOB [2017] AD 70	Joladhar Ain 2000(Act XXXVI of 2000); Environment Conservation Act, 1995	The transfer/allotment of the water body by EPB to BGMEA and consequently the change of the nature and character of the said water body (�Joladhar�) by BGMEA is completely violative of the said two laws and as such the violators are liable to be punished with imprisonment and fine and such illegal construction is liable to be demolished for which BGMEA or any other person is not liable to get any compensation.
29.	8	2016	Bangladesh & ors Vs. BLAST & ors 8 SCOB [2016] AD 1	Code of Criminal Procedure, 1898 Section 54, 167, 169, 344; Special Powers Act, 1974 Section 3; Remand; Reasonable suspicion	In clause �Firstly� of section 54 the words �credible information� and �reasonable suspicion� have been used relying upon which an arrest can be made by a police officer. These two expressions are so vague that there is chance for misuse of the power by a police officer, and accordingly, we hold the view that a police officer while exercising such power, his satisfaction must be based upon definite facts and materials placed before him and basing upon which the officer must consider for himself before he takes any action. It will not be enough for him to arrest a person under this clause that there is likelihood of cognizable offence being committed. Before arresting a person out of suspicion the police officer must carry out investigation on the basis of the facts and materials placed before him without unnecessary delay. If any police officer produces any suspected person in exercise of the powers conferred by this clause, the Magistrate is required to be watchful that the police officer has arrested the person following the directions given below by this court and if the Magistrate finds that the police officer has abused his power, he shall at once release the accused person on bail. In case of arresting of a female person in exercise of this power, the police officer shall make all efforts to keep a lady constable present.
30.	8	2016	Bangladesh & ors Vs. Hamid Ali Chowdhury & ors 8 SCOB [2016] AD 126	Specific performance of contract; declaration of title; barred by limitation;	We hold that the plaintiff was entitled to get exclusion of the time of the absence of defendant Nos.1 and 2, the heirs of

					Syed Salamat Ali from Bangladesh and the High Court Division rightly gave the said benefit and held that the suit was not barred by limitation. We further hold that time was not the essence of the contract and with the execution and registration of the general power attorney in favour of the plaintiff by Salamat Ali, the earlier contract dated 06.03.1978 was novated and the High Court Division rightly held so.
31.	8	2016	S.A.M.M. Mahbubuddin Vs. Laila Fatema 8 SCOB [2016] AD 134	Custody of Minor	Considering the facts and circumstances- especially the facts that minor S.A.M.M. Zohaibuddin has already attained the age of almost 7 years and he is now residing along with his ailing elder brother in his father's house and is being taken good care of by his father, grandfather and grandmother, we are inclined to allow the prayer of the leave-petitioner to retain the custody of his minor son S.A.M.M. Zohaibuddin till disposal of Family Suit.
32.	8	2016	Israil Kha & ors Vs. Syed Anwar Hossain & ors 8 SCOB [2016] AD 136	Under-raiyat; Tenancy; holding over; acquisition of rent receiving interest	The plaintiffs did not take any step to get back the land of plot No.4 after expiry of the period of lease mentioned in the kabuliyat. Defendant Nos. 1 and 2, the under-raiyat, continued their possession in suit plot No.4 as lawful tenants under the plaintiffs by holding over and after acquisition of rent receiving interest, they became tenants directly under the Government.
33.	8	2016	Bangladesh & ors Vs. Ranjit Krishna Mazumdar 8 SCOB [2016] AD 141	Acid Aparadh Daman Ain, 2002 Section 13	The learned Judge of the Tribunal acted in accordance with the law in bringing the matter to the notice of the authority concerned in accordance with section 13 of the Acid Aparadh Daman Ain, 2002. We also note that the learned Judge of the Tribunal observed that all three Investigating Officers were negligent in their duties and a direction to the authority concerned was regarding all three of the Investigating Officers of that case. We find from the order of the Administrative Appellate Tribunal that it was observed that although no action was taken against the first Investigating Officer, namely Md. Akram Hossain and third Investigating Officer, Md. Mahfuzur Rahman for neglecting their duties, a departmental proceeding was started against the respondent Ranjit Krishna Mazumder, who was the second Investigating Officer. The Administrative Appellate Tribunal held that this was a discriminatory act and the respondent's application before the Administrative Tribunal was rightly allowed.
34.	8	2016	Anti Corruption Commission Vs. Md. Rezaul Kabir & ors 8 SCOB [2016] AD 144	Section 161 of the Penal Code, 1860; Section 5(2) of the Prevention of Corruption Act, 1947; Section 561A of the Code of Criminal Procedure, 1898; Durnity Daman Commission Bidhimala, 2007 Rule 16	A proceeding cannot be quashed depending on alleged procedural error in the method of collection of evidence to be adduced and used. The High Court Division failed to distinguish the allegations of demands, acceptance and attempts to accept gratifications and those with the procedure to collect evidence to substantiate allegations of acceptance and attempts to accept gratifications or demands, thereby, erroneously quashed the proceedings.
35.	7	2016	Idrisur Rahman & ors Vs Syed Shahidur Rahman & ors (Surendra Kumar Sinha,C.J) 7 SCOB [2016] AD 1	Constitution of Bangladesh, Article 152; Article 96; Article 102; Supreme Judicial Council; Misconduct of a Judge; Code of Conduct; Judicial review; audi alteram partem	It is to be borne in mind that in adjudicating a disciplinary proceeding against a Judge of the highest court and holding trial of an offender in a criminal case, one cannot claim similar principle to be followed. For proving an offence against an offender, the prosecution must prove the offence against him beyond reasonable doubt but this doctrine cannot be applicable in respect of a Judge while hearing a disciplinary proceeding for removal of a

					Judge on the ground of gross misconduct. In the alternative, it may be said that an ordinary offender and a Judge cannot be equated at par while finding them guilty of the charges.
36.	7	2016	Karim Khan & ors Vs Kala Chand & ors (Md. Abdul Wahhab Miah, J) 7 SCOB [2016] AD 32	Code of Civil Procedure, 1908, Section 115; Order VII, Rule 3; Permanent Injunction;	It is a well settled legal proposition that the Appellate Court is the last Court of fact and if the Appellate Court comes to a finding of fact on consideration of the evidence on record that cannot be disturbed or reversed by the High Court Division in exercising jurisdiction under section 115(1) of the Code of Civil Procedure, unless it can be shown that the finding of the Appellate Court is perverse or contrary to the evidence on record or based on misreading of the evidence on record or on misconception of law. It is also a settled legal principle that in a suit for permanent injunction title can be looked into incidentally and the prime consideration is whether the plaintiff has got exclusive possession in the suit land.
37.	7	2016	Shantipada Shil Vs Sunil Kumar Sarker and others (Nazmun Ara Sultana, J) 7 SCOB [2016] AD 37	Pre-emption; date of knowledge	On scrutiny of the deposition of this preemptor-petitioner we find that the preemptor-petitioner while deposing before court, though denied this alleged fact that he obtained the certified copy of the case kabala in the year 1982 for the opposite party No.2, but he did not deny the fact that he was the engaged lawyer of the opposite party No.2. The opposite party No.2 filed Other Suit No.70 of 1982 challenging the genuineness of the impugned kabala. In the circumstances it is not believable at all that the preemptor-petitioner could not know about the case kabala before his alleged date of knowledge. From the facts and circumstances stated above it is rather proved beyond any doubt that the preemptor-petitioner knew about the case transfer in the year 1982. In the circumstances the trial court rightly dismissed the case for preemption.
38.	7	2016	BLAST & anr Vs Bangladesh & ors (Syed Mahmud Hossain, J) 7 SCOB [2016] AD 42	Commutation of death sentence	The petitioner has no significant history of prior criminal activity and that he was aged 14 years at the time of commission of the offence and 16 years at the time of framing of charge. The petitioner has been in the condemned cell since 12.07.2001, that is, more than 14 years. Considering all aspects of the case, we are of the view that the death sentence of the petitioner be commuted to imprisonment for life.
39.	7	2016	Md. Imtiaz Faruque Vs Afsarunnessa Khatun Chowdhury & ors (Muhammad Imman Ali, J) 7 SCOB [2016] AD 46	(Emergency) Requisition of Property Act, 1948; Section 5 (7)	It is an admitted fact that the suit land was acquired in L.A. Case No. 06 of 1948-49 and although steps have been taken for release of the land from acquisition, the applicants have not succeeded in getting the land released. According to section 5 (7) of the (Emergency) Requisition of Property Act, 1948 the land having been duly acquired and compensation paid, it vests absolutely in the Government free from all encumbrances. Hence, the title in the property is no longer with the petitioner. We note from the plaint that the petitioner has not included any prayer for declaration of title and hence, in any event, the prayer for temporary injunction is not sustainable.
40.	7	2016	Bo-Sun Park Vs State & another (Hasan Foez Siddique, J) 7 SCOB [2016] AD 50	Code of Criminal Procedure, 1898 Section 247 read with section 403	Since the order passed under section 247 of the Code of Criminal Procedure is one of acquittal the second complaint on the same allegation is not maintainable. At whatever stage of the proceeding the acquittal order section 247 is ordered, such order will operate as a bar the fresh trial, in the same way as are acquittal after trial on merits.
41.	6	2016	Bangladesh & ors Vs Sontosh Kumar Shaha & ors	Article 102 and 44 of the Constitution; Clause (5) of	Despite the absence of any provision empowering the Tribunal to pass any

			6 SCOB [2016] AD 1	article 102 read with article 117(2) of the Constitution; The power of Administrative Tribunal to pass interim order;	interim order, the Tribunal is not powerless since it has all the powers of a civil court and in proper cases, it may invoke its inherent power and pass interim order with a view to preventing abuse of the process of court or the mischief being caused to the applicant affecting his right to promotion or other benefit. But the Tribunal shall not pass any such interim order without affording the opposite party affected by the order an opportunity of being heard. However, in cases of emergency, which requires an interim order in order to prevent the abuse of the process and in the event of not passing such order preventing such loss, which cannot be compensated by money, the Tribunal can pass interim order as an exceptional measure for a limited period not exceeding fifteen days from the date of the order unless the said requirements have been complied with before the expiry of the period, and the Tribunal shall pass any further order upon hearing the parties.
42.	6	2016	Md. Nurul Abser Vs Alhaj Golam Rabbani & ors 6 SCOB [2016] AD 54	Arbitration Act, 2001: Sections 39, 42, 43 and 44:	A combined reading of the provisions of sections 42, 43 and 39 of the Act, 2001 clearly shows that the only remedy open to a person who wants to set aside an arbitral award is to file an application under section 42 of the Act, 2001 within sixty days from the date of receipt of the award and after the expiry of the period of sixty days as envisaged in the section, the award becomes enforceable within the meaning of section 44 thereof and thus, jurisdiction of the civil Court has impliedly been barred if not expressly. In the context, we may also refer to section 9 of the Code which has clearly provided that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred and therefore, in view of the provision of section 42 of the Act, 2001, clause (d) of rule 11, Order VII of the Code is attracted.
43.	6	2016	Mrs. Ruksana Huq & ors Vs A. K. Fayazul Huq & ors 6 SCOB [2016] AD 61	Code of Civil Procedure, 1908 Order I rule 10(2)	Though there is no clear provision mentioning the word ‘transposition’ but order I rule 10(2) of the Code of Civil Procedure enables the courts to make such transposition, Order I rule 10(2) has empowered the courts to strike out name of any party, either plaintiff or defendant, improperly joined and also to add any persons-either as plaintiff or defendant-who ought to have been joined whether as plaintiff or defendant or whose presence before the court may be necessary for effectual and complete adjudication of the matter. Exercising this very power the courts can make transposition also of either of the parties of a suit or other proceeding to the other category of the parties and the courts also are doing so, and it has become a long practice now. Of course, generally, the courts will not allow transposition of defendants as plaintiffs after striking the names of the original plaintiffs or after transposing them as defendants. But in appropriate facts and circumstances-as these are in the present case-the courts should not be reluctant to make such transposition of the parties for the ends of justice or to prevent abuse of the process of the court.
44.	6	2016	Bangladesh & anr Vs Md. Bellal Hossain Mollik & anr 6 SCOB [2016] AD 65	Police Officers (Special Provisions) Ordinance, 1976 Section 3 read with Bangladesh Public Service Commission (Consultation) Regulation, 1979 Regulation 6:	On consideration of section 3 of the Ordinance vis-a-vis regulation 6 of the Regulations, it is obvious that consultation with Public Service Commission is mandatory before passing the order of dismissal in respect of each of the respondent as

					section 3 of the Ordinance has not ousted the operation of other laws, rules and regulations.
45.	6	2016	Sohel Dewan & ors Vs State 6 SCOB [2016] AD 70	Penal Code, 1860 Section 302/34:	In the facts of the case before us, where there is some inkling of a doubt as to which of the shots from the firearms of the accused caused the death, or conversely which one of the three accused who fired the shots missed his target, the application of sections 302/34 of the Penal Code was correct, but the question remains as to whether the death sentence would be appropriate. We are inclined towards the view that where the conviction is not under section 302 of the Penal Code simpliciter, and where the complicity of the accused is proved by the aid of section 34 of the Penal Code, then the sentence of death would not be appropriate.
46.	6	2016	Anti Corruption Commission Vs Md. Shahidul Islam & ors 6 SCOB [2016] AD 74	Public Servants; Members of Parliament; Anti-Corruption Commission	The oath that they took referred to their obligation to ‘faithfully discharge the duty’ upon which they were about to enter. They are public servants since they held office by virtue of which they were authorized or required to perform public duty. The word ‘office’ has been used in Articles 3 and 3D of P.O.28 of 1973 meaningfully.
47.	5	2015	State Vs. Dafader Marfoth Ali Shah & ors 5 SCOB[2015]AD 1	Evidence Act, 1872 Section 57 Judicial notice Penal Code, 1860 Section 107, 109, 120A, 120B. Offence of abatement Article 104 of the Constitution	The exercise of the power of doing 'complete justice' under article 104 is circumscribed by two conditions, (i)that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and (ii) that the order which Supreme Court passes must be necessary for doing ‘complete justice’ in the cause or matter pending before it. Obviously the matter pending before us in this appeal is the acquittal of two accused-respondents Dafader Marfoth Ali Shah and L.D. (Dafader) Abul Hashem Mridha of the charges under sections 302/34 and 302/109 of the Penal Code. Leave to file this appeal was granted to consider only whether the acquittal of the present two accused-respondents from the charges under sections 302/34 and 302/109 of the Penal Code was correct and justified. So, obviously, the question whether the acquittal of all the accused persons from the charge of criminal conspiracy-is not at all a matter pending before us. It has already been pointed out above that the present State-appellant or any other aggrieved person had opportunity to challenge the acquittal of accused persons from the charge of criminal conspiracy as per statutory provisions, but they did not avail that opportunity and allowed a long period to be elapsed rendering that opportunity to appeal time-barred and conferring the accused persons a right to be treated acquitted from the charge of criminal conspiracy-as ordered by a court of law. In the name of doing 'complete justice' this right of the accused persons now cannot be ignored.
48.	5	2015	Md. Abdus Sattar Miah Vs Sreemati Raman Sona Dashya & ors 5 SCOB[2015]AD 88	Hindu Widow Life Interest Partition Suit	If a Hindu widow or a Hindu woman having life interest is not allowed to pray for partition of the joint properties by metes and bounds, then she would be deprived of enjoying her such right, as in the absence of partition by metes and bounds, she would not be able to enjoy her life interest therein. And if it is held that a Hindu widow or a Hindu woman having life interest would not be able to file a suit for partition, then the other co-sharers of the joint properties may use such decision as lever against such Hindu woman and thus create obstructions in the enjoyment of her life interest in the joint properties.

					Therefore, we find no substance in the point that plaintiff No.1 not being a co-sharer in the suit khatain and having life interest only could not maintain the suit for partition. And we hold that a Hindu widow or a Hindu woman having life interest can very much maintain a suit for partition for the fullest enjoyment of her such right in the joint properties.
49.	5	2015	Bangladesh Vs. S.M. Raiz Uddin Ahmed 5 SCOB[2015]AD 94	Disciplinary action Adverse remark Disciplinary proceeding	It is not permissible to take disciplinary action against a person solely on the basis of adverse remarks made by a Tribunal in a criminal case unless the allegations imputed in the adverse remarks are proved in disciplinary proceedin
50.	5	2015	M/S. Rajib Traders Vs The Artha Rin Adalat & anr 5 SCOB[2015]AD 98	How interest is to be calculated; The Artha Rin Adalat Ain, 2003, Section 50	The interest to be paid by the judgment debtor will have to be calculated according to the prevailing interest rate or rates, which may be different for different periods, from the time of filing of the suit till the payment of the decretal amount by the judgment debtor.
51.	5	2015	Haji Mahmud Ali Londoni & anr Vs. State & anr 5 SCOB[2015]AD 102	Circumstantial evidence	It is settled principles that where the inference of guilt of an accused is to be drawn from circumstantial evidence only, those circumstances must, in the first place, be cogently established. Further, those circumstances should be of a definite tendency pointing towards the guilt of the accused, and in their totality, must unerringly lead to the conclusion that within all human probability, the offence was committed by the accused excluding any other hypotheses.
52.	4	2015	Bangladesh Shilpa Rin Sangstha & anr Vs. Rony Twines Ltd & ors 4 SCOB [2015] AD 1	Remission of interest, sick industry, past interest, auction sale, Special Committee for Remission	The question is whether the expressions ff p c and c p c used in this sub-clause (C) above include remission of all interest accrued from the day of taking loan and already paid by the sick industry by installments against the total outstanding amount to be excluded or the interest accrued on the day of recommendation made by the Special Committee out of the total amount of outstanding dues. The expression ffb means obtainable or to be paid, that is, the interest which has accrued from the date of privilege of remission of interest given and not the past interest already paid.
53.	4	2015	Md. Noor Hossain & ors. Vs. Mahbuba Sarwar & ors. 4 SCOB [2015] AD 4	Ex-parte decree, Inherent power under section 151 of CPC, rejection of a plaint	Whether the statements made in the plaint are false or not, are purely questions of fact and are to be decided at the trial. In rejecting the plaint, the learned Judges invoked section 151 of the Code, but the inherent power under the section cannot be exercised on assumptions and presumptions of facts and or on suspicion. In other words, the truth or falsity of the statements made in the plaint cannot at all be a ground to reject a plaint either be it under Order VII, rule 11 or under section 151 of the Code.
54.	4	2015	Shahid Ullah @ Shahid & ors Vs. The State 4 SCOB [2015] AD 11	Section 302 of Penal Code, 1860; Justification for death sentence	The offence which these two condemned prisoners committed is most heinous and brutal. These two condemned prisoners along with other accused Mir Hossain, with cool brain, made a plan to hijack a baby taxi by killing the driver and according to that pre- plan they hired the C.N.G. baby taxi of the deceased as passengers and took the baby taxi to a lonely place and thereafter they murdered the baby taxi driver brutally. This type of crime is on the increase in our society. For hijacking a baby taxi or any other vehicle the hijackers do not hesitate for a moment to take the life of the innocent driver of the vehicle which is very much precious

					for the near and dear ones of that poor driver. This type of killers/murderers cannot and should not get any mercy from the court of law. There is no reason for showing any leniency or mercy to this type of offenders who are enemy for the whole society. So we are unable to accept the submission of the learned advocate for the condemned prisoners to reduce the sentence of death to life imprisonment. In our opinion this is a fit case for imposing death sentence on killers.
55.	4	2015	Jibon Bima Corporation & ors Vs. Md. Abu Kawsar Jalil & ors. 4 SCOB [2015] AD 16	Jibon Bima Corporation (Officers and Employees) Service Regulations, 1992; seniority; selection committee	If more than one employee is appointed at the same time, their seniority will be counted on the basis of merit list prepared by the selection committee and not from the date of their joining.
56.	4	2015	Rokia Begum Vs. The State 4 SCOB [2015] AD 20	Meaning of life sentence; Section 45, 53, 57 of Penal Code; Sentence hearing; Extenuating circumstances; Commutation of the sentence of death	The way it has been interpreted, the word ‘life’ does not bear its normal linguistic meaning. In other words, a person sentenced to imprisonment for life does not necessarily spend his life in prison, although section 45 of the Penal Code defines ‘Life’ as the life of a human being unless the contrary appears from the context. The given interpretation has been arrived at with the aid of section 57 of the Penal Code, which provides that in calculating fraction of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for 30 (thirty) years. This last mentioned section read with relevant provision of the Jail Code effectively means that a person sentenced to imprisonment for life will be released after spending a maximum of 2212 years in prison. Under section 35A of the Code of Criminal Procedure the period of time spent by the accused in custody during pendency of the trial would be deducted from his total sentence. Thus we find that in many serious murder cases, where the trial lasts for many years, the accused who is found guilty and sentenced to imprisonment for life gets released after serving a total of 22’ years including the period spent in custody during trial.
57.	4	2015	Mosharaf Com. Tex. Mills Ltd & ors Vs. ECOM Agro. Corp. Ltd & ors 4 SCOB [2015] AD 28	Arbitration proceeding; Valid agreement	It appears from the judgment of the High Court Division that the High Court Division found that there was a valid agreement between the plaintiff and defendant wherein an arbitration clause has been stipulated and pursuant to the said agreement an arbitration proceeding has already been commenced before the Arbitration Tribunal at Liverpool. This suit has been instituted subsequent to the arbitration proceeding. The High Court Division held that though written statement has been filed but, in fact, the same can be treated as information to the court regarding pendency of arbitration proceeding before Arbitration Tribunal at Liverpool. Since arbitration proceeding has already been initiated between the parties before initiation of the instant suit, we are of the view that the High Court Division rightly disposed of the Rule staying further proceeding of the suit with a direction to settle the dispute in the arbitration proceeding.
58.	3	2015	Criminal Appeal No. 54 of 2007 3 SCOB [2015] AD 1	Breach of contract; Offence of cheating; Section 491 0f the Penal Code	In every case of cheating there is implicit agreement between the parties. The vital factor to be considered is whether at the time of agreement there was intention to carry out the terms of the contract or not. If there is nothing to show that there was no intention at the time of agreement which was arrived at, but the failure to fulfill the terms of the

					agreement was the subsequent event, the offence of cheating cannot be said to have been committed. It would only be a case of breach of contract/
59.	3	2015	Civil Petition for leave to Appeal No. 1536 of 2010 3 SCOB [2015] AD 5	Third Party`s right of appeal ; Service of summons	Even a third party can file an appeal in case he is affected by a decree passed in a suit.
60.	3	2015	Civil Appeal No. 34 of 2007 3 SCOB [2015] AD 11	Hindu law; life interest; legal necessity for transferring land	It is true that in this kabala dated 02.03.1997 it has been mentioned that for performing the Shradhya ceremonies of her parents Komoda sold this land to the plaintiff. But this recital only in the document is not enough to prove that actually there was legal necessity for transferring this land by Komoda-who, admittedly, had life interest only in the land in question. Evidence is necessary to prove that actually there was legal necessity for transferring this land by Komoda.
61.	3	2015	Civil Petition for leave to Appeal Nos. 2080-2081 of 2010 3 SCOB [2015] AD 16	Benami Transaction; Immovable property; function of the Court; Section 5 of Land Reform Ordinance, 1984	The preamble cannot control the meaning and expression when the meaning of the expression is clear and ambiguous. The aid of the preamble can be taken if the meanings of the words to be interpreted are not clear and ambiguous.
62.	3	2015	Civil Petition for leave to Appeal No.1659 of 2013 3 SCOB [2015] AD 24	Article 102 (5) of the Constitution; Public Servants (Retirement) Act, 1974	The bank concerned being a company under the Companies Act, does not come within the ambit of article 102(5) of the Constitution. So, we are of the view that the Rule in the instant case ought to have been discharged on the same ground, especially when the same Bench had decided earlier that the employees of Pubali Bank Limited are not in the service of the Republic or of any Corporation, National Enterprise or Local Authority.
63.	3	2015	Civil Petition for leave to Appeal No.2495 of 2010 3 SCOB [2015] AD 27	Service benefit	The petitioner got appointment in 1997, that is, long before the promulgation of the Service Rules of 2005. So he is entitled to get benefit of the Service Rules under which he got his appointment, that is, he is entitled to get the benefits as provided in Service Rules of 1988 and his service would be regulated under the said provision of law.
64.	2	2015	CIVIL PETITION FOR LEAVE TO APPEAL NOS.718-720 of 2013 Citation: 2 SCOB [2015] AD 1	Fraud practiced upon Court Company Court	Since the judgments were obtained by practicing fraud upon the court, we have no alternative but to set aside the said judgments of the Company Court and the persons concerned should be put to justice. We direct the Registrar to file complaints before the Chief Metropolitan Magistrate, Dhaka against the respondent(s)... for using forged documents for securing judgments from the Company Court.
65.	2	2015	CIVIL PETITION FOR LEAVE TO APPEAL NOS.1428 AND 1429 OF 2014 Citation: 2 SCOB [2015] AD 5	RPO Election Petition Candidate Locus Standi Defaulter Member of Parliament	The High Court Division failed to comprehend the proper meaning of `candidate` given in section 2(ii) of the RPO vis-�-vis article 49(1) thereof in observing that `the petitioner being a candidate of the 10th National Parliamentary Election did not act rather he was an intending candidate and wanted to become a candidate.` And we hold that the petitioner being a proposed `candidate` for election as a Member of the Parliament for the Constituency in question, he had every locus standi to file the election petitions and those were maintainable in law.
66.	2	2015	CIVIL APPEAL NO.29 of 2006 Citation: 2 SCOB [2015] AD 8	Concurrent findings New plea Travellers` cheques Defence plea	Before this Appellate Division the defendant-appellant did not raise any question as to the correctness of the above concurrent findings of the courts of facts, rather it has raised a new plea to the effect that the plaintiffs could not prove that the defendant bank sold the said 152 travellers` cheques. But we are unable to accept this new defence

					plea at this stage specially in view of the pleadings of the contesting parties and the evidence adduced by them.
67.	2	2015	CIVIL PETITION FOR LEAVE TO APPEAL NOs.342 and 327 of 2011 Citation: 2 SCOB [2015] AD 12	National Anthem Commercial Use Mobile Phone Operators National Anthem Rules,1978 Donation	There is no gainsaying the fact that each of the leave-petitioners has been charging revenue for playing the national anthem on the mobile phones. On consideration of the Rules, in general, we find that there is no scope for commercial use of the national anthem. Such commercial use of national anthem shows utter disrespect to the national anthem.
68.	2	2015	CIVIL APPEAL NO. 268 OF 2009 Citation: 2 SCOB [2015] AD 15	Arbitral award Arbitration proceedings Arbitration Act Public policy Breach of contract Compensation	The arbitral award is generally not open to review by Courts for any error in finding on facts and applying law for the simple reason that it would defeat the very purpose of the arbitration proceedings.
69.	2	2015	CIVIL APPEAL NOS.45-48 OF 2012. Citation: 2 SCOB [2015] AD 24	Voluntary retirement scheme Termination Policy decision Economic decisions Public interest	Voluntary retirement scheme is a method used to reduce surplus staffs. Participation in the voluntary retirement plan is voluntary. It has to result in an overall reduction in the existing strength of employees. Accordingly, we are not inclined to accept the observation of the High Court Division that the respondents had been terminated in the grab of voluntary retirement. Moreover, the respondents have filed writ petitioners after about 8 years of the acceptance of their prayers and after receiving retirement benefits.
70.	1	2015	CIVIL APPEAL NO.116 OF 2010. WITH CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 374 OF 2011. AND JAIL PETITION NOS.18 OF 2008, 03 OF 2009, 01 OF 2010, 08 OF 2010, 16 OF 2010, 2-3 OF 2011, 05 OF 2012 & 7-8 OF 2012.	Mandatory death sentence Certificate relating to interpretation of the Constitution Rule of law Beneficent discretion ultra vires	Since we hold that Sub-Sections (2) and (4) of Section 6 of the Ain, 1995 and Sub-sections (2) and (3) of Section 34 of the Ain of 2000 are ultra vires the Constitution, despite repeal of the Ain of 1995, all cases pending and the appeals pending under the repealed Ain shall be regulated under the said law, but on the question of imposing sentence, the sentences prescribed in respect of those offences shall hold the field until new legislation is promulgated. I hold that there was total absence of proper application of the legislative mind in promulgating those Ains, which may be rectified by amendments. In respect of section 303 of the Penal Code, the punishment shall be made in accordance with section 302 of the Penal Code. It is hereby declared that despite repeal of Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995, the pending cases including appeal may be held under the repealed Ain, while dealing with the question of sentence, the alternative sentences provided in the corresponding offences prescribed in the Nari-O-Shishu Nirjatan Daman Ain, 2000 shall be followed.
71.	1	2015	CIVIL APPEAL NO.73 OF 2012	Right to be considered for promotion Conditions of service of a police officer	Writ petitioners did not challenge any disciplinary action taken against them by the Inspector General of Police. The authority did not give the directions in accordance with the Police Act or the Bengal Police Regulations or the Ordinance of 1969. The writ petitioners also did not challenge the propriety of the imposition of black marks upon them. They have challenged the embargo imposed upon them by the Police Headquarter, which directly affected their right to be considered for promotion to the next higher post. Clause (5) of Article 102 does not stand in their way of making an application under Article 102(1) of the Constitution subject to the provision of Article 45 of the Constitution.
72.	1	2015	CIVIL PETITION FOR LEAVE TO APPEAL NO.1594 OF 2015	International Crimes (Tribunals) Act, 1973 Maintainability of Writ Petition	In view of the clear bar under article 47(3) of the Constitution read with article 102(3) thereof, the High Court Division had no jurisdiction to entertain the writ petition in question and the

					same not being entertainable, it ought to have summarily rejected the writ petition on the ground of its maintainability.
73.	1	2015	CIVIL PETITION FOR LEAVE TO APPEAL NO.1585 of 2010	VAT Act Alternative remedy	The High Court Division observed: `The present writ petition without preferring any objection/appeal under section 9(2ka)/42 of the VAT Act is not also maintainable.' We find no reason to interfere with the impugned judgment of the High Court Division.
74.	1	2015	CIVIL PETITION FOR LEAVE TO APPEAL NO.1603 of 2013.	Administrative Appellate Tribunal Departmental proceeding	The Administrative Appellate Tribunal came into a finding that while passing the impugned decision the Administrative Tribunal failed to consider that the departmental proceeding against respondent No.1 was not initiated and disposed of legally and that the Administrative Tribunal arrived at a wrong finding in disallowing the case causing serious miscarriage of justice. The findings arrived at and the decision made by the Administrative Appellate Tribunal having been based on proper appreciation of law and fact do not call for interference.
75.	1	2015	CRIMINAL APPEAL NO. 07 OF 2004	Rape Delay in lodging FIR Beyond any reasonable doubt	The reason of delay in lodging FIR even after the release of the victim from the clutch of the accused has not been properly described; so it is very difficult to consider the evidence of prosecutrix, P.W.2 as beyond any reasonable doubt which is the fundament requirement of conviction of an accused person. (Majority View)
76.	1	2015	CRIMINAL APPEAL NO.27 OF 2002	Penal Code 1860 Section 406/420 Criminal Breach of Trust	It appears from the petition of complaint that the respondent sent taka 6,00,000/- to the appellant through Bank with an understanding that he would supply the cloths at a reduced rate during Eid period. Though the appellant admitted that he had received the said amount but without supplying clothes he had repaid his loan by the said money, thereby, misappropriated the same. Lastly, he denied repaying the said money to the complainant. From the aforesaid facts and circumstances, it is difficult to accept that prima-facie ingredients of section 406/420 of the Penal Code had not been established against the appellant

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Serial No.	Issue	Year	Name of the Parties/Case No and Citation	Key Word(s)	Short Ratio
1.	14	2020	Grameenphone Limited, represented the Chief Executive Officer, GP House, Bashundhara, Baridhara, Dhaka- 1229. Vs. Bangladesh Telecommunication Regulatory Commission (BTRC), represented by the Chairman, IEB Bhaban, Ramna, Dhaka-1000 and others (SYED REFAAT AHMED, J) 14 SCOB [2020] HCD	The Bangladesh Telecommunication Regulation Act Section 63 and 65;	It is our finding further that section 65 in its entirety is the corridor within the statutory scheme through which the sanctity of the section 63 penal sanction must be gauged. Consequentially, any failure to trigger section 65 or any of its components necessarily leads to a statutory infraction resulting in a more fundamental constitutional infraction. If the section 65 provisions are to be obliterated or to be considered a dead letter of the law one is necessarily at a loss to find other statutory mechanisms that may be called upon for due implementation of section 63. Furthermore, it is our unqualified view that the power to charge an administrative fine to a maximum of Tk. 300 Crore must always have an in-built mechanism of fair play. Otherwise one is visited with a scenario of administrative anarchy resulting from an exercise of unfettered discretion.
2.	14	2020	Abdur Rahman and others Vs. Judge (District Judge) Arpita Shampparrti Prattarpan Appellate Tribunal, Brahmanbaria and others (Md. Ashfaqul Islam, J) 14 SCOB [2020] HCD	Writ of Certionary: Maintainability	It is well settled that in writ certiorari this Division would be loath to interfere with a decision of a Tribunal in specific, if the same is not a perverse one or a gross miscarriage of justice has been done. A writ of certiorari is maintainable only in a case where erroneous decision within it jurisdiction. Even if there is mere error of law that will not confer any power on the High Court Division to issue a writ of certiorari except where there is an error apparent on the face of the record, that means, the error must be something more than a mere error. The High Court Division can issue writ of certiorari only if it can be shown that the judgment has been obtained by fraud, collusion or corruption or where the tribunal has acted contrary to the principles of natural justice or where there is an error apparent on the face of the record or where the tribunal's conclusion is based on no evidence whatsoever or where the decision is vitiated by malafide.
3.	14	2020	Dr. Nafia Farzana Chowdhury Vs. Bangabandhu Sheikh Mujib Medical University (BSMMU), represented by its Vice Chancellor and others. (Zubayer Rahman Chowdhury, J) 14 SCOB [2020] HCD	Equal protection of law in appointment; Unlawful Appointments not validated by rendering service;	If any particular case the selection committee abuse its power in violation of Article 31 of the Constitution, that may be a case for setting aside the result of a particular interview. If any appointment is given by the Authority in gross violation of the Rules, lapse of any period of time and rendering of service in the said post by the incumbent cannot clothe the said appointment with any legal validity.
4.	14	2020	Feroza Begum and others Vs. Md. Nannu Mollah and others	Doctrine of past and closed transaction read with Sections 95 & 95A of	In the present case the Plaintiffs grandfather sold the suit property by registered saf-kabala deed dated

			(A.K.M. Abdul Hakim: J.) 14 SCOB [2020] HCD	the State Acquisition & Tenancy Act, 1950.	11.10.1963 and executed a deed of re-conveyance on that date with a condition of repurchase of the same within eight years period that is till 10.10.1971.The President's Order No.88 of 1972 came into effect on 03.08.1972 and following certain amendments therein by P.O No. 136 of 1972 and the condition giving right of repurchase having expired. The sale/transaction became past and closed transaction and the plaintiff was not entitled to get relief on the ground that the property was a mortgaged property.
5.	14	2020	Md. Akram Ali and others Vs. Khasru Miah and others (Muhammad Khurshid Alam Sarkar, J) 14 SCOB[2020] HCD	Partition Suit or Title Suit, Ubi Jus ibi remedium, Section 54, Order 20, Rule 18 and Order 26, Rule 13; Joint tenants.	Simply remanding back the suit for proper evaluation of the much-discussed documentary evidences, there shall not be an effective adjudication of the suit. Since in a partition suit, a person approaches the Civil Court with a grievance of not being able to enjoy his/her property absolutely or independently or peacefully and, in responding to the plaintiff's case, if the defendant questions the very title of the plaintiff, in that scenario, it is incumbent upon the Court to assess and determine the plaintiff's title, right and interest in the suit land. If the plaintiff does not make proper prayer in the plaint, the suit must not be dismissed on the said ground; rather it would be the duty of the Court to frame appropriate issue/s on the basis of the pleadings and submissions put forwarded by all the parties to the suit and proceed with the suits towards its effective disposal.
6.	14	2020	Md. Anwar Hossain, Proprietor of M/s. Pride Knit Wear Ltd. Vs. Registrar, Patents, Designs and Trade Mark, Dhaka and another. (S.M. Maniruzzaman, J) 14 SCOB [2019] HCD	An appeal under section 100(2) of the Trade Marks Act, 2009;	Prior use of trade mark and prior application for registration in case of identical marks will go in favour of the prior user.
7.	14	2020	Md. Badaruddin being dead his heirs Most. Arjuda Khatun and others Vs. Md. Shahidullah Miah (Zafar Ahmed, J) 14 SCOB [2020] HCD	Sale deeds, Article 113 of the Limitation Act, 1908, Baina dated, Time from which the period of limitation begins, Novation of contract, Performance of a contract,	Time consumed in the so called arbitration proceedings or waiting for subsequent refusal are of no assistance to the plaintiff. Specific performance is a relief which the Court will not grant, unless in cases where the parties seeking it come promptly, and as soon as the nature of the case will admit. The rights of equity are rights which are given to litigants who are vigilant and not to those who sleep.
8.	14	2020	Md. Giasuddin Vs. Govt. of Bangladesh, represented by the Secretary, Ministry of Primary and Mass Education, Bangladesh Secretariat, Ramna, Dhaka and others. (Naima Haider, J) 14 SCOB [2020] HCD	Rules 2(Ga) & 9(1) of the অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিশ্ববিদ্যালয়ের শিক্ষক (চাকুরি শর্তাবলী নির্ধারণ) বিধিমালা, ২০১৩	The issue before the Honorable HCD is whether Rule 2(Ga) and Rule 9(1) of the 2013 Rules should be struck down. Rule 2(Ga) define 'কার্যকর চাকুরিকাল which means that if a teacher renders, say 10 years of service prior to nationalization, his effective service period under the 2013 Rules shall be 50% thereof, i.e. 5 years. However, if the particular teacher's term of service is less than 4 years, then his previous service years shall not be counted after the nationalization. The provision is strange but not unreasonable. The nationalized teachers shall be entitled to different Government facilities including pension benefits. If Rule 2(Ga) was drafted differently to take account of the entire period of service prior to nationalization, then it would have had severe financial implications on the Government. Therefore, Rule 2(Ga) of the 2013 Rules is the mechanism used to reduce the financial exposure and at the same time, provide

					benefits to the teachers. It can be argued that the effect of Rule 2(Ga) is that the petitioners expectation to service benefits is affected; however, expectation is not synonymous to 'rights and entitlements'. Loss of expectation of the petitioners cannot be a ground to strike down Rule 2(Ga) of the 2013 Rules. Rules 9(1) অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিশ্ববিদ্যালয়ের শিক্ষক (চাকুরি শর্তাবলী নির্ধারণ) বিধিমালা, ২০১৩ provides that the seniority shall be counted by reference to কার্যকর চাকুরীকালের ভিত্তিতে. This provision also states that the direct appointee shall be senior to the teacher who has been nationalized under the 2013 Rules despite the fact that his tenure of service is less than the tenure of service of the nationalized teacher. This is manifestly absurd, particularly when the teacher directly recruited and nationalized teachers are treated at par. The previous tenure of service in the private schools is recognized by the 2013 Rules. On the date when a nationalized teacher is appointed, he carries forward a deemed tenure of service. The deemed tenure of service recognized by first part of Rule 9(1) would cease to be recognized by second part of Rule 9(1). The second part of Rule 9(1) of the 2013 Rules renders the first part of the Rules 9(1) being শিক্ষকের নিয়োগ প্রদানের তারিখ হইতে কার্যকর চাকুরিকালের ভিত্তিতে শিক্ষক পদে তাহার জ্যেষ্ঠতা গণনা করা হইবে redundant. It appears that the teachers who are nationalized are affected because their seniority would not be properly recognized. This would affect their পদোন্নতি, সিলেকশন গ্রেড এবং প্রযোজ্য টাইম স্কেল because under Rule 9(3) of the 2013 Rules নিয়োগ বিধির শর্ত পূরণ সাপেক্ষে, উপ-বিধি (১) ও (২) এর অধীন জ্যেষ্ঠতার ভিত্তিতে শিক্ষকগণ পদোন্নতি, সিলেকশন গ্রেড এবং প্রযোজ্য টাইম স্কেল প্রাপ্য হবেন। The Court has concluded that Rule 9(1) of the 2013 Rules is manifestly unreasonable and self contradictory and therefore, is liable to be struck down.
9.	14	2020	Md. Golam Morshed Vs. Court of the Executive Magistrate and General Certificate Officer, Dhaka, Deputy Commissioner's Office Building, Dhaka and another (MOYEENUL ISLAM CHOWDHURY, J) 14 SCOB [2020] HCD	Sentence of Fine: whether it is a Public Demand;	Unquestionably the sentence of fine passed by any Criminal Court is not a "public demand" within the meaning of the Public Demands Recovery Act, 1913. As it is not a "public demand" within the meaning of the Public Demands Recovery Act, the question of realization of the fine amounts through initiation of the Certificate Case is out of the question. Such Certificate cases are an abuse of the process of law. The realization of any fine amount under any sentence of fine of any Criminal Court cannot be effected by resorting to the provisions of the Public Demands Recovery Act, 1913.
10.	14	2020	Md. Ibrahim Vs. The State (Md. Badruzzaman, J) 14 SCOB [2020] HCD	Under section 9(4)(Kha) of Nari-O-Shishu Nirjatan Daman Ain 2000 (as amended in 2003); FIR, Misuse of the privilege of bail, Ad-interim bail, Non-extension of bail, Section 498 of the Cr. P.C.	It is settled principle that bail is a very valuable right granted to an accused by the Court and once it is granted, it should not and ought not to be interfered with lightly except upon valid grounds and cogent reasons. When an accused is enjoying the privilege of bail granted by the High Court Division for a limited period in a pending rule under section 498 of the Cr.P.C or in an appeal under special

					law, as the case may be, and he is regularly appearing before the Court below his bail cannot be cancelled and he cannot be taken into jail custody by the Court below only on the ground of non-extension of the period of bail by the High Court Division. If such situation arises, the Court below must wait for the result of the rule or the appeal, as the case may be, in which the accused was granted ad-interim bail.
11.	14	2020	মোঃ নাজমুল হুদা ওরফে নাজমুর হুদা বনাম রাষ্ট্র এবং অন্য (বিচারপতি এম. ইনায়েতুর রহিম) 14 SCOB [2020] HCD	দ্য কোড অব ক্রিমিনাল প্রসিডিউর, ১৮৯৮ এর ধারা ২৬৫সি।	আদালত দ্য কোড অব ক্রিমিনাল প্রসিডিউর, ১৮৯৮ এর ধারা ২৬৫সি এর বিধান অনুযায়ী তখনই একজন আসামীকে মামলা হতে অব্যাহতি দিতে পারবেন যদি নথি (রেকর্ড) এবং তৎসঙ্গে দাখিলকৃত কাগজাদি (documents submitted therewith) হতে প্রাথমিক দৃষ্টিতেই যদি দেখা যায় যে, ঐ আসামীর বিরুদ্ধে মামলার কার্যক্রম পরিচালনা করার জন্য পর্যাপ্ত কোন উপাদান (Sufficient ground for proceeding) নেই। আসামী পক্ষ শুধুমাত্র মামলার নথি এবং তৎসঙ্গে দাখিলকৃত কাগজাদির উপর তাঁর বক্তব্য উপস্থাপনের অধিকারী। এ পর্যায়ে আসামীর দাখিলকৃত আত্মপক্ষ সমর্থনে কৈফিয়তের কাগজাদি বা বক্তব্য কিংবা আসামীর পেশা, পদবি বা অবস্থা (status) বিবেচনা করার সুযোগ নেই। কোন আসামীর বিরুদ্ধে অভিযোগের প্রাথমিক/আপাত যথার্থতা থাকলে (prima facie case) অভিযোগ গঠন পর্যায়ে তাঁকে অব্যাবহতি দেয়ার কোন সুযোগ নেই। অভিযোগ গঠন পর্যায়ে আসামীর বিরুদ্ধে আনীত আপাতদৃষ্ট অভিযোগটি সত্য কিংবা মিথ্যা তা নির্ধারণ করার সুযোগ নেই; সেটি নির্ধারণ হবে বিচার প্রক্রিয়ার শেষে উপস্থাপিত সাক্ষ্য প্রমাণের ভিত্তিতে।
12.	14	2020	National Warehouse . Vs. Anti-Corruption Commission and others (Md. Ruhul Quddus, J) 14 SCOB [2020] HCD	Section 14 of the Money Laundering Protirodh Ain 2012 and Principles of Natural Justice in Criminal Justice System: Section 16 of the Money Laundering Protirodh Ain 2012 :	The principle of natural justice by way of service of prior show cause notice are to be complied with, where any legal or vested rights of a citizen or entity are going to be taken away by an administrative order. Non service of prior show cause notice can be a very strong ground against such administrative/quasi judicial order that generates different type of writ petitions amongst others. However, natural justice in the sense of prior show cause notice is not available in criminal justice system. The criminal law, however, provides procedural fairness in enquiry/investigation, ensures the right to defence of an accused and fair trial. For the purpose of freezing/attachment of property under section 14 of the Act V of 2012, no prior show cause notice is necessary. It may alert the offender, prompt him to transfer or take the property beyond his possession immediately after receipt of the notice thus defeat the purpose of law. The ACC can proceed with an application for freezing even before completion of the investigation, if there are any credible documents/probative materials or information, which are gathered during investigation, subject to fulfillment of the conditions as provided in section 14 (2) of the Act V of 2012. It will depend on the facts and circumstances of a particular case. Even in rare cases, an order of freezing/attachment of one's property can be passed when such documents/materials or information are available to the prosecuting/enquiring agency at the time of receiving the initial complaint or at the initial stage of pre-

					FIR enquiry, but this must not be a general practice. Where despite a prolonged inquiry, no FIR is lodged and the ACC fails to produce any primary evidence regarding one's involvement in any offence of money laundering or any predicate offence, his right to maintain and operate bank account cannot be infringed at the whim of Anti-Corruption Commission. A person aggrieved by an order passed under section 14 of the Money laundering Protirodh Ain (Act V of 2012), can prefer an appeal directly to the High Court Division under section 16 without approaching the Court below under section 15 of the Act.
13.	14	2020	Pankaj Roy Vs. Alliance Securities & Management Limited and others. (Md. Mozibur Rahman Miah, J) 14 SCOB [2020] HCD	Company matter, Article 45 of the Articles of association; Interim order, Board of directors, Modify the judgement, Administration of Justice;	Invariably, under no circumstances, this court can interfere with its own judgment which was even affirmed by the Honb'le Appellate Division.
14.	14	2020	Pruesiau Aug Marma and another Vs. Aungmra Shang Marma and another (Kashefa Hussain, J) 14 SCOB [2020] HCD	Temporary injunction, Mutation Case, Special statutory rules and regulations, Cittagong Hill Tracts Refgulation 1900, Customary laws of the Chittagong Hill Tracts, Article 152 of the Constitution of Bangladesh, Existing laws; Private parties regarding declaration of a deed, Registration of the deed, Competence any of party.	Mandatory issuance of notice upon the statutory authorities before filing of any suit in accordance with the relevant laws and also taking into consideration the existing customary laws of the Chittagong Hill Tracts which contemplate mandatory service of notice to the concerned authorities prior to filing any suit. Customary laws and usages of the Chittagong Hill Tracts are all within the ambits of law and as such they can not be violated.
15.	14	2020	The State Vs. Advocate Noor-E-Alam Uzzal and others (Md. Nazrul Islam Talukder, J) 14 SCOB [2020] HCD	Contempt of Court;	Whether the conduct, behavior and activities like shouting, assaulting the Bench Officer and ransacking the case records, fall within the purview of contempt of court. Contempt may be constituted by any conduct that brings authority of the court into disrespect, disregard and/or disrepute or undermines the dignity and prestige of the court. By the aforesaid act of the Advocates, the administration of the justice and the court proceedings had been seriously interfered with and the course of justice had also been obstructed. The behavior and the conduct of the Advocates by beating and assaulting the Bench Officer is insulting, disrespectful and threatening to the administration of justice.
16.	14	2020	আব্দুল্লাহ আল মামুন বনাম বাংলাদেশ সরকার ও অন্যান্য (বিচারপতি মোঃ আশরাফুল কামাল) 14 SCOB [2020] HCD	Bangladesh Civil Service Recruitment Rules 1981 এর ৪(৩)(এ)(বি) উপবিধি:	দূরভিক্রম্য চারটি ধাপ তথা প্রয়োজনীয় শিক্ষাগত যোগ্যতা, এমসিকিউ, লিখিত ও মৌখিক পরীক্ষা অতিক্রম করে আসা একজন প্রার্থীকে বাংলাদেশের সর্বজন প্রহণযোগ্য সাংবিধানিক প্রতিষ্ঠান তথা বাংলাদেশ সরকারী কর্ম কমিশন কর্তৃক নিয়োগের সুপারিশ করা সত্ত্বেও যথাযথ সংস্থা (appropriate agency) কর্তৃক কোনরূপ উপযুক্ত কারণ প্রদর্শন না করে নিয়োগের অনুপযুক্ত মর্মে মতামত প্রদান করা বেআইনী, সংবিধান বিরোধী।
17.	13	2020	M/S BHIS Apparels Limited represented by its Managing Director, 671, Dattapara, Hossain Market, Tongi, Gazipur, Bangladesh. -Versus- Alliance for Bangladesh Workers Safety, BTI Celebration Point, Plot 3 & 5, Road 113/A, Gulshan-2, Dhaka- 1212, Bangladesh and others. (MOYEENUL ISLAM CHOWDHURY, J) 13 SCOB [2020] HCD	Private body -Acting on the footing of Republic Company-when can be treated on citizen	Thus it is palpably clear that the respondent no. 1 (Alliance) has been acting with the consent of the DIFE and assisting it in inspecting and ensuring the safety of the garment factories in the country. So we hold that the Alliance has been performing de facto functions in connection with the affairs of the Republic. Since as per Article 102(1) any person aggrieved can enforce any of the fundamental rights guaranteed under Part III of our Constitution, we do not find any difficulty on the part of the petitioner-company, an indigenous

					Bangladeshi company whose shareholders and directors are all Bangladeshi citizens, to invoke Articles 27 and 40 of the Constitution in this case. Besides, Articles 27 and 40 do not say who can enforce them; it is only Article 102 (1) which says any person aggrieved can enforce them which undeniably fall under Part III of the Constitution. So Articles 27 and 40 which have been invoked by the petitioner-company are to be interpreted in the light of Article 102(1) of the Constitution. We are of the opinion that for the limited purpose of enforcement of any of the fundamental rights as guaranteed by Part III of the Constitution, an indigenous company like the petitioner-company, whose shareholders and directors are all Bangladeshi citizens, is a 'citizen' of Bangladesh. This interpretation, as we see it, is in perfect accord with the intention of the framers of the Constitution and the tone and tenor of Article 102(1) of the Constitution.
18.	13	2020	AHN. HONG, SIK. HPCC-SEL JV Vs. Central Procurement Technical Unit (CPTU) and others (Md. Ashfaqul Islam, J) 13 SCOB [2020] HCD	General Jurisdiction of Reveal Panel	If we now exercise our common sense it can be perceived when the Review Panel can 'dismiss' an Appeal if the same is not well founded either in fact or law then why it can not 'allow' the same if a decision appealed against is otherwise wrong ? In other words, when CPTU is competent to dismiss an Appeal it can also allow an Appeal if it is otherwise found to be competent.
19.	13	2020	East West Property Development (Pvt.) Ltd. and another Vs. Deputy Commissioner, Manikgonj (Naima Haider, J) 13 SCOB [2020] HCD	Mutation, Water Development Board, the (Emergency) Requisition of Property Act, 1948, Deputy Commissioner, cancellation of mutation, repealed, স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭ (The Act, 2017), valid acquisition, acquisition of the property	That there being no decision of the Government for acquisition of the property in question, there is no valid acquisition of the property and in the meantime the said proceeding having become non-est due to repeal of the said section 47 of the said Ordinance, 1982, there is no further scope to take decision for acquisition of the property.
20.	13	2020	Major Md. Nazmul Haque & ors. Vs. State and another (Farah Mahbub, J.) 13 SCOB [2020] HCD	CrPC Section 265D:	Where the case is at a stage of framing charges and the prosecution evidence is yet to commence, the trial court has to consider the question of sufficiency of the ground for proceeding against the accused on a general consideration of materials placed before him by the investigating agency. The truth, veracity and effect of the evidence are not to be meticulously judged. The standard of the test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at this stage.
21.	13	2020	Md. Abu Yousuf Shah. -Versus- The State (Md. Shawkat Hossain, J) 13 SCOB [2020] HCD	Anti-Corruption Commission, Prevention of Corruption Act, 1947, demanding bribe, substantive evidence, extra-judicial confession.	Anti-Corruption Commission, Prevention of Corruption Act, 1947, demanding bribe, substantive evidence, extra-judicial confession.
22.	13	2020	Md. Nazmul Huda Vs. The State and another (M. Enayetur Rahim, J) 13 SCOB [2020] HCD	Quashment , Nari-O-Shishu Nirjatan Damon Ain, 2000 (as amended, 2003), Complaint, inquiry, police station, cognizance	Moreso, the word "অভিযোগটি অনুসন্ধানের জন্য" as contemplated in section 27(1ka) is very significant. It means that an inquiry should be done on the allegations brought against an accused. It does not mean that inquiry should be done to ascertain whether the complainant went to the police station and he/she was refused by the police.
23.	13	2020	Md. Shamsujjaman & ors. Vs. Bangladesh & ors. (Zubayer Rahman Chowdhury, J) 13 SCOB [2019] HCD	The Concept of Administrative Fairness	This concept of "administrative fairness" requires that an Authority, while taking a decision which affects a person's right prejudicially, must act fairly and in accordance with law. We note, albeit with utmost regret and disappointment, that in the instant case, there has been

					a gross violation of the well-settled principles of natural justice, and that too by the Syndicate. In our view, failure to comply with the principles of natural justice leads to arbitrariness, which in turn, vitiates the impugned order.
24.	13	2020	Md. Zohurul Islam Vs. Sree Aokkhoy Kumar Roy and others (Md. Miftah Uddin Choudhury, J) 13 SCOB [2020] HCD	Ego cannot be allowed by the court of law.	In the facts and circumstances as it appears from the record, I find that the deceased Most. Hosneara Begum Laizu/Lipa Rani Roy was a Hindu lady, but she was converted to Muslim and she died as a Muslim, presence in her father's house at the time of committing suicide can be a reason to find that she was reconverted to a Hindu. As a Muslim or a believer in Islam she is entitled to get burial as per the Islamic rituals. The prayer of Mr. Subrata Chowdhury as mentioned above cannot be considered by this Court since the deceased herself did not donate her dead body to any institution. Apparently, the father of the deceased has been suffering from some ego and for his such ego Mr. Subrata Chowdhury, as well as Mr. Md. Mominul Islam made such prayers finding themselves helpless to establish that the deceased was reconverted to a Hindu. Such ego cannot be a reason for the Court to decide any dispute like the instant one. For such ego a dead body has been rottening in mortuary since last four years. Keeping dead body of a human being for such long time cannot be allowed by any religion, rather it amounts to an inhuman act. Apparently the father just for his ego behaved like an inhuman being, and such sort of ego cannot be allowed in the society or by the court of law.
25.	13	2020	Mosammat Syeda Shamima Kader Vs. Mohammad Enamur Rashid Chowdhury (Md. Rezaul Hasan, J) 13 SCOB [2020] HCD	Permanent injunction, City Corporation tax, boundary of the property, transfer of specific property, prima-facie title, tax receipt, misreading and non-reading of evidence	That the City Corporation holding tax receipt is not the proof of possession if isolated from a lawful prima-facie title claimed on the basis of apparently genuine deed and with reference to a clear chain of title. It has to be noted here that, this case of claiming title in the suit property based on no title in any specific property is apparently a case of the land grabbers. Case of a land grabber is totally isolated from the chain of title and their deeds do not refer to any specific immovable property, so that a land grabber can grab any property or any portion of a property, on the basis of the papers created by or kept in their hands.
26.	13	2020	Syed Saifuddin Kamal, son of SM Kamal Pasha, of House 419, Road 30, Mohakhali, DOHS, Dhaka- 1206 and another Vs. Bangladesh, represented by the Secretary, Ministry of Health, Bangladesh Secretariat, P.S. Ramna, Dhaka and others (SYED REFAAT AHMED, J) 13 SCOB [2020] HCD	Provide Emergency Medical services for accidental injured persons and protecting "Good Samaritans".	The Court issued a Rule Nishi on 10.02.2016 calling upon the Respondents to show cause as to why the failure to ensure the provision by existing hospitals and clinics, whether governmental or private, of emergency medical services to critically injured persons should not be declared to be without lawful authority and violative of the fundamental rights as guaranteed under Articles 27, 31 and 32 of the Constitution. The Court further ordered that the underlying Writ Petition has been filed with the primary intent of ensuring the easy accessibility to emergency medical care and intervention as prevents the undue loss of life of road accident victims. Concomitantly, the intent also is of preparing a set of back-up action plans, policy formulations and, in all likelihood, statutory enactments to facilitate the assured availability of such services and interventions in the best feasible manner. The courts aid is sought in this regard to bring about a mechanism ensuring further the personal safety of "Good Samaritans" made possible by

					the assured and ready availability of assistance of law enforcement agencies and medical service providers both in the public and the private sectors. As per the directions of the Court, the guidelines that are placed before this Court for its sanction and approval are in the form of the moK `~N©Ubvq AvnZ e¨w³i Riæix ¯^v¯'¨ ‡ mev wbwðZKiY I mnvqZvKvixi myiÿv cÖ`vb bxwZgvjv, 2018| (bxwZgvjv) This Court, hereby, further directs, and as per the prayer of all parties concerned agreed on the same, that the bxwZgvjv in its entirety be deemed enforceable as binding by judicial sanction and approval pending appropriate legislative enactments incorporating entrenched standards objectives, rights and duties. This Court further directs a wide dissemination of the bxwZgvjv through publication variously in the Official Gazette and through electronic and print media as shall serve both public interest and secure a broader objective of social mobilization of views and perception of the necessity of such guidelines.
27.	13	2020	Abul Kashem and two others Vs. The State (Md. Ruhul Quddus, J) 13 SCOB [2020] HCD	-	The form prescribed in the Criminal Rules and Order (Practice and Procedure of Subordinate Courts), 2009 presupposes no handwritten memorandum under column No.7. However, there is a blank space for making memorandum under column No.8, which the recording Magistrate is required to fill up stating the reason of his belief regarding voluntariness of the confession. If any Magistrate does not make any memorandum in his own handwriting under column No.7 of the prescribed form of confession, or does not put his signature after making memorandum under column No.8 and does not put his signature after making memorandum, if any, under column No.9, it cannot be held to be a gross illegality and fatal to the prosecution case. The purpose of making memorandum in compliance with section 164 (3) of the Code would suffice by signing the printed memorandum, provided that the precautions prescribed by the Code are duly taken by the recording Magistrate. There is confusion among the members of Bar as well as the Magistrates as to whether a Magistrate is required to make handwritten memorandum at the bottom of recorded confession under column No.7. Where there is already a printed memorandum in the language of law, albeit pre-amendment, it would be an unnecessary and meaningless exercise for the Magistrates to make another memorandum thereunder in the same language. Since the use of old printed memorandum with pre-amendment language and not making of memorandum by own hand of the Magistrate do not injure the accused as to their defence on merits, it would not make the confessions inadmissible.
28.	13	2020	The State -Versus- 1. Md. Sharif and 2. Md. Mintu Khan (Jahangir Hossain, J) 13 SCOB [2020] HCD	Factors considered the capital punishment to lesser punishment	The contention of learned Advocate Mr. S.M Abdul Mobin for the defence is that the sentence of death is too harsh in this case because both the accused persons tried to save the life of the victim removing him to more than one hospital from the place of occurrence as disclosed by the prosecution witnesses. Now the question is commutation of sentence as pointed out by the defence to be considered or not. In true sense, it is most difficult task on the part of a judge to decide what would be quantum of sentence in awarding upon an accused for committing the offence

					when it is proved by evidence beyond shadow of doubt but the judge should have considered the legal evidence and materials for punishment of the perpetrator not as a social activist [63 DLR 460, 18 BLD 81 and 57 DLR 591]. Sometimes, it depends on gravity of the offence and sometimes, it confers upon an aggravating or mitigating factor. In such a situation, it is a very hard job for the court to determine the quantum of sentence whether it will be capital punishment or imprisonment for life upon the accused persons since they played a role for saving the victim's life soon after occurrence as evident by the said prosecution witnesses. At the same time it is very important to note that the victim was completely an innocent teenager who had no fault of such dire consequences at the hands of the accused persons. Since the determination of awarding sentence to the accused persons is at the middle point of views, it may turn to impose capital punishment or imprisonment for life and that is why, the advantage of lesser one shall find the accused persons to acquire in the instant case. More so, both the accused persons have no significant history of prior criminal activities and their PC and PR [previous conviction and previous records] are found nil in the police report. In this regard it finds support from the decision in the case of Nalu – Vs-The State, reported in 1 ALR(AD) (2012) 222 where one of the mitigating factors was previous records of the accused.
29.	13	2020	S.M. Sajjad Hossain, Vs. Chairman, National Freedom Fighter Council, Ministry of Freedom Fighter, (SHEIKH HASSAN ARIF, J) 13 SCOB [2020] HCD	Age of freedom fighters.	Circulars, Nitimala, Paripatra etc. It is well settled that in exercise of executive functions of the government, the government can issue circulars, notifications, paripatra etc. to keep its work transparent. Such notifications or circular etc. may be issued in order to give benefits of the enlisted freedom fighters, which is no doubt an appreciable job by the government. But in doing so, the government cannot amend the parent law, namely the definition of freedom fighter as provided by Article 2(h) of P.O. 94 of 1972. Section 2(11) of the Bangladesh Freedom Fighters Welfare Trust Act, 2018 (Act No.51 of 2018), When parliament itself cannot fix the age of freedom fighters as the fixing of such age of freedom fighters will be contrary to the Speech of Bangabandhu and the Declaration of Independence by Bangabandhu, which are part of the Constitution, the same Parliament cannot empower the government to fix such age. On this very simple ground, this empowerment "উক্ত সময়ে যাহাদের বয়স সরকার কর্তৃক নির্ধারিত বয়স সীমার মধ্যে" as incorporated in the definition of বীর মুক্তিযোদ্ধা under section 2(11) of the Bangladesh Freedom Fighters Welfare Trust Act, 2018 (Act No.51 of 2018), has become untra-vires the Constitution. It has long been decided by various judicial pronouncements that which you cannot do directly, you cannot do the same indirectly. As stated above, when the Parliament itself cannot fix the age of the freedom fighters even by enactment of law without amending the Constitution, it cannot empower anybody including the government to fix such age of freedom fighters.
30.	12	2019	Liberty Fashion Wears Limited -Versus- Bangladesh Accord Foundation and others	Article 102(2) of the Constitution.	For Article 102 (2) to be attracted however the petitioner must be aggrieved by an action of a person performing functions "in connection with

			(Tariq ul Hakim) 12 SCOB [2019] HCD1		the affairs of the Republic", or local authority or statutory body and he should be without any other alternative remedy or redress . The remedy sought by the petitioner is simply a direction on the Respondent No. 1 for inspecting the petitioner's factory and publishing the findings in its website. If the petitioner's factor is unsafe and not fit in any way then the Respondent No. 1 has nothing to loose. The petitioner cannot seek remedy from the Civil Court or any other forum in the form of a direction since there is no contractual relationship with the respondent No. 1. Similarly an action for defamation also will not serve any purpose since the petitioner wants the Respondent No. 1 to publish the accurate condition of its factory. Thus to compel the Respondent No. 1 to inspect its factory and publish the findings in its website the petitioner does not appear to have any other alternative remedy. In such view of the matter therefore this Rule is also maintainable under Article 102 (2).
31.	12	2019	Md. Reza Kamal -Versus- Secretary, Ministry of Civil Aviation, Bangladesh Secretariat, Ramna, Dhaka and others (Tariq ul Hakim, J.) 12SCOB[2019]HCD 15	Promotion solely on the basis of an interview.	In Bangladesh Vs. Shafiuddin Ahmed reported in 50 DLR (AD) 27 it has been clearly stated that marks fixed for interview should be kept to a minimum so that the accumulated credits achieved by the candidates over the years in their respective ACRs should not be disregarded by a momentary impression created in the minds of the Interview Board. However as stated earlier, such practice for providing promotion to the employees solely on the basis of an interview is unfair and creates sufficient scope for arbitrariness and unlawful decisions for which aggrieved persons may take the opportunity of getting redress. It is therefore hoped that the respondents Biman authority shall take appropriate measure in this regard to fill up the lacuna. In this respect it is to be pointed out that in several decisions in the Indian jurisdiction including B.V. Sivalah V. K. Addanki Babu reported in 1998 6 SCC 720 as well as Horigovind Yadav Vs.Rewa Sidhi Gramin Bank and others in (2006) 6 SCC 145 promotions with seniority were given to certain officers with retrospective effect for not having been promoted earlier for the ends of justice and in the instant case we feel that the petitioner is in a similar position and has been deprived unlawfully by an unfair method of selection for promotion and deserves to be promoted along with those listed in the impugned order
32.	12	2019	Dr. A. Y. M. Akramul Hoque -Versus- Government of the People's Republic of Bangladesh and others (MOYEENUL ISLAM CHOWDHURY, J) 12 SCOB [2019] HCD 24	Exhaustion of efficacious remedy provided by law: How far it bars the invocation of the writ jurisdiction, Liberal interpretation of Equality before law:	There is a constitutional bar to the invocation of the writ jurisdiction of the High Court Division under Article 102(2) (a) of the Constitution, if there is any other equally efficacious remedy provided by law. If any impugned action is wholly without jurisdiction in the sense of not being authorized by the statute or is in violation of a constitutional provision, a Writ Petition will be maintainable without exhaustion of the statutory remedy. Besides, on the ground of mala fides, the petitioner may come up with a Writ Petition bypassing the statutory alternative remedy. It is well-settled that mala fides goes to the root of jurisdiction and if the impugned action is mala fide, the alternative remedy provided by the statute need not be availed of. Equality before law" is not to be interpreted in its absolute sense to hold that all persons are equal in all respects

					disregarding different conditions and circumstances in which they are placed or special qualities and characteristics which some of them may possess but which are lacking in others. The term “equal protection of law” is used to mean that all persons or things are not equal in all cases and that persons similarly situated should be treated alike. Equal protection is the guarantee that similar people will be dealt with in a similar way and that people of different circumstances will not be treated as if they were the same. When a case can be decided without striking down the law but giving the relief to the petitioners, that course is always better than striking down the law.”
33.	12	2019	Shakwat Hossain Bhuiyan -Versus- Bangladesh and others (Md. Emdadul Huq, J; F.R.M. Nazmul Ahasan, J; Md. Abu Zafor Siddique, J) 12 SCOB [2019] HCD 39	Article 102 of the Constitution of the People’s Republic of Bangladesh, Article 66 of the Constitution of the People’s Republic of Bangladesh Public Interest Litigation, Election Commission,	It follows that the petitioner can very well seek a remedy under article 102 (2) (b) (ii), of course subject to the condition that no other efficacious remedy is available to him. In seeking a remedy under clause 102(2)(b)(ii). He does not have to be an aggrieved person for filing this case. The underlying principle of a writ quo warranto, as interpreted by the Supreme Court of India and as quoted above, is clearly the same as enshrined in clause 102(2) (b) (ii) of our Constitution. Under this clause, “any person” can file an application and this court can, upon such an application, exercise the jurisdiction a writ of quo warranto. The applicant is not required to be “an aggrieved person” as opposed to the requirement of clause (1) and (2) (a) of article 102 under which a public interest ligation may be filed. In such a case the duty of this is court to hold an inquiry on the allegation and to arrive at a decision keeping in view of the legal and factual issues. (a) The issue of maintainability on account of standing of the petitioner to file this case under article 102(2)(b)(ii) (Issue No. 1) is a purely legal issue, and it has been held that the case is maintainable on that count. (b) The issue of maintainability on account of the bar or restriction imposed by article 125 of the Constitution (Issue No. 2) is purely a legal issue, and it has been held that article 125 article is not a legal bar to entertain this case and that the case is maintainable. More over admittedly he was relased before expiry of 10 years. In such a back ground, it is the well settled principle of law that the fact of merely raising a claim different to the claim of jail authority or the finding of this court does not render it as a disputed question of fact. In fact, the date of his release as decided by this court as being on 01.06.2006 goes to his benefit in calculating the period of sentence served out by him and the quantam of remission permissible to him. If the date of his release claimed by him being 01.12.2005 is taken as correct he would be required to serve a longer period. So the issue of date release is not a disputed question of fact. (Ratio of Md. Emdadul Huq, J
34.	12	2019	(F.R.M. Nazmul Ahasan, J) 12 SCOB [2019] HCD 121	Ingredients to prove the suit for specific performance of Contract;	Article 66(2) of the Constitution of the People’s Republic of Bangladesh and the Article 12(1)(d) of the RPO relates to the election disputes triable before the election Tribunal. These factual aspect of the writ petition which

					discussed above are not admitted rather, it is disputed in different aspect and without taking evidence about the disputed fact of date of release of the respondent No.7 from Jail custody, the calculation of blood donation to the Sandhani and the special remission provided in the Jail Code which is recorded in the history ticket, it cannot be decided in a summary proceeding in the writ petition. In this respect Article 125 of the Constitution of Bangladesh is very much applicable in the facts and circumstances of the case. Particularly, the facts and circumstances arises in the writ petition is a clear bar as this type of dispute cannot be decided without any evidence both oral and documentary. An election dispute can only be raised by way of an election in the manner provided therein. Where a right or liability is created by a statute providing special remedy for its enforcement such remedy as a matter of course must be availed of first. The High Court Division will not interfere with the electoral process as delineated earlier in this judgment, more so if it is an election pertaining to Parliament because it is desirable that such election should be completed within the time specified under the Constitution. In the instant case, a serious dispute as to the correct age of the appellant was raised before the High Court Division which was not at all a subject matter of decision on mere affidavits and certificates produced by the parties. As regards the first ground, it may be stated that if the purpose of the writ petition was only to challenge the election of the appellant on the alleged ground of his being a defaulter then we would have felt no hesitation to declare at once that the writ petition was not maintainable. Indeed, we have already held while rejecting CPSLA No.21 of 1988 (quoted in the affidavit-in-opposition) that “such questions as to disqualification, etc. which are questions of fact are better settled upon evidence which can be done more appropriately before a Tribunal. In the summary proceeding under Article 102 it is not desirable and, more often than not, not possible to record a finding as to a disputed question of fact.”
35.	12	2019	(Md. Abu Zafor Siddique, J) 12 SCOB [2019] HCD 125	Principle to amend Pleadings;	It is now a well settled proposition of law that if there is efficacious and alternative remedy is available, a writ petition under Article 102 of the Constitution is not maintainable. Admittedly it has been raised whether Article 125 of the Constitution puts a bar in the instant case in hand. Admittedly as per the aforesaid provision of law there is a legal bar questioning the result of the election declared by the commission except following the provisions of RPO. In the present case in hand it appears that the petitioner in the disguise of Article 102 of the Constitution trying to enforce the provisions of RPO. In the present case in hand it further appears that the question as raised by the petitioner regarding certain declarations made by the respondent No.7 before the Election Commission which is completely a dispute to be resolved by the competent authority as provided in the Represented People Order (RPO).

36.	12	2019	Md. Rafiqul Islam and others -Versus- Md. Abdul Hadis being dead his heirs and Mahbub Alam and others (Mr. Justice Md. Rais Uddin) 12 SCOB [2019] HCD 129	Ingredients to prove the suit for specific performance of Contract;	In a suit for Specific Performance of Contract the essential ingredients which the plaintiffs are required to prove in order to succeed in a suit for Specific Performance of Contract, are that the Bainapatra is genuine, considerations money passed by the parties and delivery of possession was given in pursuance thereof.
37.	12	2019	British American Tobacco Bangladesh Company Ltd -Versus- Begum Shamsun Nahar (Syed Md. Ziaul Karim, J) 12 SCOB [2019] HCD136	Principle to amend Pleadings;	We find that one of the fundamental principles governing the amendment of the pleadings is that all the controversies between the parties as far as possible should be included and multiplicity of the proceedings avoided.
38.	12	2019	Proshika Manobik Unnayan Kendro -Versus- The Commissioner of Taxes and others (Borhanuddin, J) 12 SCOB [2019] HCD 146	Section 158 of the Income Tax Ordinance 1984:	The proviso to Sub-Section (2) of section 158 of the Ordinance vests discretion with the Commissioner of Taxes to reduce statutory requirement of payment under Sub-Section(2) of section 158 of the Ordinance, if the grounds stated in the application filed by the assessee applicant under the proviso appears reasonable to him/her. From the language of the proviso, we do not find any statutory duty of the CT to pass an order assigning reason. Though there is no requirement to give an opportunity of hearing to the assessee-applicant or recording reason, but still the Commissioner of Taxes should be aware that his /her order must reflect reasonableness from where it can be transpire that the Commissioner of Taxes applied his/her judicial mind in passing the order. But for inadequacy or absence of reasonableness, the order cannot be set aside. It is discretion of the Commissioner of Taxes.
39.	12	2019	Begum Khaleda Zia, Former Prime Minister, wife of Shaheed President Ziaur Rahman -Versus- Anti-Corruption Commission (ACC), Dhaka and another (Mr. Justice Obaidul Hassan And Mr. Justice S M Kuddus Zaman) 12 SCOB [2019] HCD 205	Cr.PC section 540A	In the case at hand, we find that the Petition under section 540A was filed by the Public Prosecutor, though it has not been expressly mentioned whether the Public Prosecutor can file such an application; the Code does not prevent the Public Prosecutor from filing as such. The case reported in 14 DLR, aides us in concluding that, where there is no such provision preventing the Public Prosecutor from filing such an application, there is no harm if the Public Prosecutor draws the attention of the Court by filing such an application for the sake of expedition and deliverance of Justice
40.	12	2019	Begum Khaleda Zia -Versus- The State and another (M. Enayetur Rahim, J) 12 SCOB [2019] HCD 211	Section 5 (2) of Prevention of Corruption Act,1947, Section 409/109 of the panel Code, Corruption, Prime Ministers orphanage Fund, Misappropriation, Criminal design.	Facilitating misappropriation of the fund which was meant to be used for welfare of orphans, particularly when Begum Zia, the Prime Minister, had entrustment and dominion over it indisputably shocks the human conscience and such act reflects a mindset derogatory to humankind. Obviously Begum Zia had liability and obligation to look after whether the Trust so formed was in actual existence. But she did not do it. Thus Begum Zia was a conscious part of a designed plan to the criminal acts constituting the offence of Criminal breach of Trust as defined in section 405 of Penal Code. Merely for the reason of political identity of a person prosecuted for an offence punishable under the penal law it cannot be said that she has been brought to justice on political victimization. We do not find any legal justification and cogent ground to award lesser punishment to the principal offender Begum Zia than the other convicts who were the abators, considering her political and social status. We consider it appropriate that justice would be met if the maximum sentence prescribed in section 409 of the Penal

					Code is awarded to Begum Zia so that the persons enjoying the highest position in any organ or any public office of the State thinks twice to go ahead with such criminal design in coming days.
41.	12	2019	Softesule Private Limited -Versus- Govt. of Bangladesh represented by the Secretary Ministry of Health, Bangladesh Secretariat, Dhaka, and others (NAIMA HAIDER J) 12 SCOB [2019] HCD 215	CPTU, Rule 60 of the PPR, Review Panel, NOC	It has been settled by this Division that when a proceeding is initiated which affects the rights of a party, the party whose right would be affected is to be given the opportunity to represent its case, whether statutory contemplated or not. The Review Panel cannot, in exercising powers under Rule 60 of the PPR, proceed to assume more powers than actually conferred. In the instant case, the Review Panel has exceeded jurisdiction and therefore, its findings cannot be sustained. It serves no purpose if the petitioner is awarded the tender but the NOC is not issued. We take the view that the failure of the respondents in issuing the NOC is manifestly arbitrary and without lawful authority.
42.	12	2019	Azadul Islam and others -versus- Most. Asis Bewa and others (Md. Rezaul Hasan, J) 12 SCOB [2019] HCD 219	Declaration of Title and permanent injunction, Lawful possession	I am also of opinion that, in a suit for permanent injunction, this Court should satisfy itself as regards the lawful nature of the plaintiffs' possession. In a suit for permanent injunction, the issue regarding title need not be and should not be conclusively decided, because the purpose of granting the relief of permanent injunction is to prevent forceful ouster of an apparently lawful occupant of the suit property, thereby disapproving the act of taking law into the defendants own hands. Nonetheless, the court should incidentally look into the title or other lawful basis of the plaintiffs acquiring and continuing in possession, to satisfy itself that the plaintiff is not an usurper or trespasser or a land grabber and that he has come in clean hands.
43.	12	2019	Md. Hossen and others -Versus- Haji Shamsunnahar Begum and others (Md. Rezaul Hasan, J) 12 SCOB [2019] HCD 225	Order 1 Rule 10 of the Code of Civil Procedure, Co-plaintiffs, interest , the Waqf Estate in the suit property	The applicant Md. Hossen and others, who had filed the application under Order 1 Rule 10 of the Code of Civil Procedure, were not entitled to be added as plaintiffs as heirs of deceased plaintiff No. 2 Haji Badsha Miah. Because, the admitted position is that, the suit property has been claimed (in the plaint) as the property of Abdul Nabi Malum Waqf Estate, not personal property of Haji Badsha Miah. As such, the added plaintiff-petitioners have denied the interest of the Waqf Estate in the suit property by asserting their personal right in the same. Hence, their interest in the suit property is in conflict with that of the (surviving) plaintiff who claims herself as the sole Motwali (Manager) of the Waqf Estate, since another Motwali (plaintiff No. 2) has died. Therefore, the interest claimed by the petitioner being in clear conflict with that claimed by the plaintiff, these Md. Hossen and 4 other are not entitled to be added as co-plaintiffs.
44.	12	2019	Kapasia Overseas Ltd -Versus- Government of the People's of Bangladesh, Ministry of Expatriates' Welfare and Oversees Employer Affairs (Md. Faruque (M. Faruque), J) 12 SCOB [2019] HCD 231	Emigration Ordinance, recruiting license being, Emigration Ordinance, 1982, section 14 of the Emigration Ordinance, 1982, cancellation of the license and forfeiture of securities	It is a mandatory provision of law that before cancellation of a license, the authority must give a chance to the licensee of being heard, failing which the cancellation has no basis in the eye of law. In this case, the order does not show nor there is anything on record to show that the respondent has given any chance of hearing to the petitioner before making such an order of cancellation and forfeiture of securities. Therefore, the order is violative of the

					section 14(1) of the ordinance and was thus bad in law. The writ Court will not examine and weigh the aggrieved person's case on merit as an Appellate Court but to ensure that he was given a fair deal by the authority in accordance with law.
45.	12	2019	Shahina Begum -Versus- The Election Commission of Bangladesh, represented by the Chief Election Commissioner (F.R.M. Nazmul Ahasan, J) 12 SCOB [2019] HCD 238	Valid Candidate , Election Commission, Re-election, schedule of re-election, rule 37 (3) of Local Government Pourashava Election Rules 2010;	That the period between the declaration of schedule of election till the publication of the result in the official gazette has been held to be comprised in the election process. The case in our hand it appears that the petitioner filed writ petition before this court invoking the Article 102 of the Constitution before publication of the official gazette. As such the writ petition is not maintainable and the rule is liable to be discharged.
46.	12	2019	Monto Sheikh being dead his legal heirs -Versus- Ibrahim Miah being dead his legal heirs (F.R.M. Nazmul Ahasan, J) 12 SCOB [2019] HCD 258	It is also settled that the defendants may have thousand of defect but it does not help the plaintiff to prove their case:	It appears that the plaintiff could not prove their case that they have any title in the suit land and also the possession. The main reasoning of this findings stated above that the basis of the title of the plaintiff is the settlement which was cancelled and the order of cancellation is in existence.
47.	12	2019	The State -Versus- Oyshee Rahman (Jahangir Hossain, J) 12 SCOB [2019] HCD 276	Mitigating factors to consider the lesser punishment from death sentence to life imprisonment.	This sentence that someone be punished in such a manner is referred to as 'Death Sentence', whereas the act of carrying out the death sentence is known as execution. The execution is not only an exemplary punishment alone that can erase the crime from the society forever. Lesser punishments may significantly prevent or reduce the crimes from the society depending on the good governance and awareness of the people. To consider the lesser punishment from death sentence to life imprisonment mitigating evidence or circumstances must be stronger than that of aggravating evidence produced by the prosecution. In this case we find the following circumstances outweigh the aggravating circumstances, 1. Condemned prisoner committed double murder without any apparent motive and was suffering from mental derailment or some sort of mental disorder and also suffering from ovarian cyst and bronchial asthma; 2. Her paternal grandmother and maternal uncle had a history of psychiatric disorders according to exibit-15; 3. She was around 19[nineteen] year old at the relevant time and the occurrence took place just immediately after her attaining the age of majority; 4. She has no such significant history of prior criminal activity [criminal cases] and 5. She had willingly surrendered to the police station soon after two days of the occurrence.
48.	12	2019	The State -Versus- 1. Md. Sharif and 2. Md. Mintu Khan (Jahangir Hossain, J) 12 SCOB [2019] HCD 294	Mitigating factors to consider the lesser punishment from death sentence to life imprisonment.	The contention of learned Advocate Mr. S.M Abdul Mobin for the defence is that the sentence of death is too harsh in this case because both the accused persons tried to save the life of the victim removing him to more than one hospital from the place of occurrence as disclosed by the prosecution witnesses. Now the question is commutation of sentence as pointed out by the defence to be considered or not. In true sense, it is most difficult task on the part of a judge to decide what would be quantum of sentence in awarding upon an accused for committing the offence when it is proved by evidence beyond shadow of doubt but the judge should have considered the legal evidence and materials for punishment of the perpetrator not as a social activist [63 DLR 460, 18 BLD 81 and 57 DLR 591].

					Sometimes, it depends on gravity of the offence and sometimes, it confers upon an aggravating or mitigating factor. In such a situation, it is a very hard job for the court to determine the quantum of sentence whether it will be capital punishment or imprisonment for life upon the accused persons since they played a role for saving the victim's life soon after occurrence as evident by the said prosecution witnesses. At the same time it is very important to note that the victim was completely an innocent teenager who had no fault of such dire consequences at the hands of the accused persons. Since the determination of awarding sentence to the accused persons is at the middle point of views, it may turn to impose capital punishment or imprisonment for life and that is why, the advantage of lesser one shall find the accused persons to acquire in the instant case. More so, both the accused persons have no significant history of prior criminal activities and their PC and PR [previous conviction and previous records] are found nil in the police report. In this regard it finds support from the decision in the case of Nalu – Vs-The State, reported in 1 ALR(AD) (2012) 222 where one of the mitigating factors was previous records of the accused.
49.	12	2019	Dr. Farhana Khanum -Versus- Bangladesh and others (SHEIKH HASSAN ARIF, J) 12 SCOB [2019] HCD 309	Penal Code, 1860, Educational Institution, Corruption, Nitimala 2012, Anti- Corruption Commission, Public Servant (Discipline and Appeal) Rules,1985, Durnity Domon Commission Act,2004,Coacing Business,	Therefore, since the very definition of the term 'Coaching Business' has only attracted the involvement teachers of the above mentioned institutions as a mischief, this Nitimala in fact has not prohibited the 'coaching business', or 'coaching centers', run by any individual in his or her private capacity who is not a teacher of the above mentioned institutions. This means involvement of an individual, who is not a teacher of the above mentioned institutions, in such coaching centers or business has not been prohibited by this Nitimala. Therefore, the prohibition, as provided by this Nitimala, only applies to the teachers of the above mentioned institutions and not to any individuals or private citizens or persons, who are not teachers of such educational institutions. From the above discussions, it appears that even in the absence of the said Nitimala, the petitioners and other teachers of non-government and government schools and colleges are not allowed to engage themselves in any sort of coaching business. This prohibition has not been provided by the said Nitimala of 2012, rather this has been given by their concerned service Rules which are delegated legislations and applicable to them. When the petitioners, or other teachers of government and non-government schools and colleges, joined their services, they joined as such fully knowing that the said Service Rules would be applicable to them. Therefore, by the said Nitimala, the government has in fact supplemented the provisions which are already in the statute books and in doing so, the government does not need to show any other sanction of statute or Act of parliament. It is the part of the constitutional power of the government as executive to run the governance and in running such governance, it is the duty and obligation of the government to take steps for implementation of the laws and regulations time to time enacted by the parliament or by the delegatees of the parliament. Under such obligations, the

governments in modern countries issue various Circulars, Paripatra, Nitimala etc. and this has now become essential and normal administrative technic in modern countries. The only limitation in issuing such Nitimala or Nirdeshika is that by such Nitimala or Nirdeshika, the government cannot curtail the rights of any citizen which is already granted in his/her favour either by the Constitution or by law or by any other legal instruments.

Therefore, in the facts and circumstances of the present cases, the petitioners have failed to show that either the Constitution or any act of parliament or any delegated legislation of this Country has given them any right to get involved in coaching business. Rather, it has become evident from the above referred delegated legislations that in fact they have been prohibited by the law of the land from getting involved in coaching business. Thus, in so far as the said Nitimala is concerned, since the same has not curtailed any rights of the petitioners guaranteed either by the constitution or any law, it cannot be knocked down by this Court. Rather, it should be protected by this Court as it is the supplemental instrument to the already existing laws of the land. In this regard, the decisions of Indian Supreme Court in Bennett Coleman Co. v. Union of India, AIR 1973 SC 106, Bishamber Daval Chandra Mohan v State of UP, AIR 1982 SC -33 and Distt. Collector, Chittoor v Chittor Disttt. Groundnut Traders Assn, AIR 1989 SC 989 may be looked into as references. Therefore, on this point of unconstitutionality and unimplementablity of the said Nitimala of 2012, as argued by the learned advocates for the petitioners, we find no substance.

Therefore, it cannot be denied that when the teachers get involved themselves in coaching business, which is prohibited by law, they are disobeying the direction of law and they know it fully that such disobedience might cause injury to the students or their guardians in that by such engagement they are utilizing their resources, potentials and capabilities in such coaching centers rather than using them in the class rooms. Therefore, this Court is of the view that, since this provision under Section 166 of the Penal Code has been incorporated in the Schedule to the Dudak Act, 2004, Dudak thinly had technical jurisdiction to enquire into the allegations as published in the news paper regarding the involvement of teachers in the coaching business. However, this thin and technical jurisdiction is only confined to the teachers of government colleges and schools and not to the teachers of non-government schools and colleges.

Though we are saying that technically Dudak had jurisdiction to enquire into the said matters, we are of the view that Dudak should have priority list as to which offences should get priority in their such enquiry and investigation when it is repeatedly reported in newspapers that Dudak does not have enough resources and logistic supports. We are of the view that leaving behind serious allegations of corruptions in National Banks, Customs Houses, Ports, Court Premises, Government Offices, Land Offices, etc. Dudak should not have inquired into the mere involvement of some teachers in coaching business relying on a newspaper report. When there are some other serious reports of corruption

					in the country, it does not also look well when Dudak shows such importance to some basically disciplinary matters when teachers of government schools are not attending classes on time. These apparently disciplinary issues should be kept at the bottom of Dudak's priority list in particular when almost each and every institution of this country is now suffering from huge corruption being committed by its employees and staffs. Though by engaging in coaching businesses the said teachers have disobeyed the direction of law, but it cannot be said that they have committed any 'corruption' as we understand the term in its general and common parlance. Therefore, we are of the view that, though thinly and technically Dudak had jurisdiction to enquire into the matters as published in the newspaper as regards involvement of the government teachers in coaching business, they should not have conducted such enquiry at all. Such enquires should have been done by the education directorate of the government or the concerned ministry itself.
50.	11	2019	Hemayet Mollah VS. The State (SALMA MASUD CHOWDHURY, J) 11 SCOB [2019] HCD 65	Assessment of evidence of related eye witnesses.	The prosecution case cannot be shaken only because the eye witnesses belong to the same family because in a case of dacoity the eye witnesses of the occurrence are always the inmates of the house in which the dacoity is committed.
51.	11	2019	Hemayet Mollah VS. The State. (Salma Masud Chowdhury, J) 11 SCOB [2019] HCD 1	Section 302 of the Penal Code	Admittedly there is no eye witnesses of the occurrence and the appellant is a nephew of the deceased having some enmity with him. Although it has been alleged that before death Shafiqul narrated the incident to some of the witnesses but that cannot be treated as dying declaration as it was not properly recorded. The witnesses to whom it has been alleged that the deceased mentioned the name of the appellant are all closely related to the deceased. In the present case we do not find any dying declaration of the deceased and it is evident from record that the deceased told about the occurrence by the appellant committed on him in the operation theater, which is not free from all doubt. Most of the witnesses deposed that they have heard from P.W.5 Md. Jabed but P.W.5 is not an eye witness and in his deposition he did not make any such statement as to connect the appellant directly.
52.	11	2019	The State M. Wahidul Haque and others (MOYEENUL ISLAM CHOWDHURY, J) 11 SCOB [2019] HCD 76	Anti-Corruption Commission Act, 2004:	As there is no express or implied provision within the four corners of the Act of 2012 debarring or prohibiting the Metropolitan or Judicial Magistracy from entertaining and dealing with any application for bail or remand at the pre-trial stage, the Magistracy is well-authorized to entertain and deal therewith in accordance with the above-mentioned provisions of the Code. From the date of lodgment of the FIR with the concerned Police Station till taking cognizance of the offence by the Senior Special Judge under section 4(2) of the Criminal Law (Amendment) Act, 1958, the Judicial or Metropolitan Magistracy is empowered to entertain, deal with and dispose of any application for bail of an accused in a case under the Act of 2012 under section 497 of the Code of Criminal Procedure. Similarly at the pre-trial stage, in the absence of any express or implied prohibition in any other special law, the Metropolitan or Judicial Magistracy may entertain, deal with and dispose of any application for bail of an accused under section 497 of the Code.

53.	11	2019	M.D. Shahabur Rahman Vs. The State and another Maintainability or legal sustainability of an application Under Section 98 of the Code of Criminal Procedure, 1898.	Section 138 of the Negotiable Instruments Act, 1881, Code of Criminal Procedure, Section 141 of the Negotiable Instruments Act, 1881.	The intention of the lawmakers in respect of provision of service of notice upon the drawer is to inform him with a demand of the cheque money (dishonoured) by serving a notice by the petitioner. On this ground a criminal proceedings under section 138 of the Negotiable Instrument Act cannot be quashed.
54.	11	2019	The State Vs. Registrar General, Supreme Court of Bangladesh and others (M. Enayetur Rahim, J:) 11 SCOB [2019] HCD 80	Anti-Corruption Commission, Section 19 of the Ain of 2004, Judicail Officers Protection Act,1850	If we examine the impugned letter dated 28.05.2007 coupled with the above provisions of law then we have no hesitation to hold that by issuing the same the Supreme Court authority had flouted the above provisions of law and that the opinion expressed in the letter that it would not be proper (mgxwPb n ‡ e bv) to take any action against respondent No.3 is nothing but an attempt to create obstacle in the process of inquiry against said respondent. The Supreme Court administration in issuing the impugned letter having considered some extraneous and irrelevant facts has abused its discretionary power vested in it. The opinion in guise of direction expressed in the impugned letter was not the upshot of any judicial determination. Such a mere administrative letter although issued as per the verbal instruction of the Hon'ble Chief Justice, patently impinges upon the rights and lawful authority of the Commission to go on with the inquiry into an allegation of corruption. The impugned letter is amenable to judicial review as it was issued by the office of the Appellate Division under its administrative capacity and therefore, the Rule is quiet maintainable; The impugned letter is a mere official communication made by the office of the Appellate Division under its administrative capacity and in no way it can be regarded as the opinion of the Supreme Court; The impugned letter though tends to give a massage that a retired judge of the Supreme Court it immune from criminal prosecution but, in fact, no one is immune as such except the Hon'ble President and that too during his term of office;
55.	11	2019	Tofazzal Hossain Khandker and others Vs. Govt. of Bangladesh represented by the Secretary, Ministry of Post Telecommunications and Information Technology, Bangladesh Secretariat, Dhaka and others (Naima Haider, J) 11 SCOB [2019] HCD 46	Action beyond authority is unreasonable	If any executive action is taken, which we consider, in light of facts and circumstances, to be unreasonable we take the view that such action was beyond authority because the executives are not authorized to act unreasonably. We are inclined to hold that the amendment made through Clause 3 of the order dated 09.03.2006 was 'whimsical''. This cannot be permitted to remain in force. However, if there is an executive order which results in continuous wrong, as in this case, we take the view that mere delay in filing the writ petition should not affect their relief. No doubt the petitioners filed the petition after a long time but that, in the given circumstances should not defeat their entitlement because the wrong done by the executive is 'continuous'. Executives can employ for temporary period but if they permit the period to extend, either expressly or by conduct, after certain time, the employee can legitimately expect to be absorbed.
56.	11	2019	Md. Abdul Kader @ Abdul Kader and another The State (Mr. Quazi Reza-Ul Hoque, J) 11 SCOB [2019] HCD 57	Special Tribunal, Section 342 of the Code of Criminal Procedure, Section 103(2) of the Code of Criminal Procedure, Article 31, Article 35,Article 36,	It appears that none of the three local witnesses were eye witnesses rather they were asked to sign as witness, which is absolutely derogatory to the norms of law and the BDR and the local police for inflicting penalty upon the accused petitioners resorted to such activity which is seriously deplorable.

					Every citizen has a right to free movement within Bangladesh and to do any business or profession subject to restriction imposed by law.
57.	11	2019	Concord Consortium Limited Vs. Deputy Commissioner of Taxes, Taxes Circle-96 (Companies), Taxes Zone-5, Dhaka and others (SHEIKH HASSAN ARIF, J) 11 SCOB [2019] HCD 4	Change of mind by the assessing officer can not justify re-opening of assessment under section 93 of the Income Tax Ordinance, 1984.	The relevant provisions in our Income Tax Ordinance, 1984 are still like pre-enactment of Indian Income Tax Act, 1961. That means, the precondition of having definite information which has to come into the possession of the Deputy Commissioner of Taxes after completion of original assessment is still very much intact under sub-section (2) of Section 93 of the said Ordinance. Therefore, we fully agree with the submissions of Mr. Noor that, the DCT must have fresh information in his possession which has come to his possession after completion of original assessment and, only on such happening, the DCT is entitled to reopen the completed assessment of a particular assessee. When a particular issue has been categorically addressed by the DCT in the original assessment order and there is no allegation that the assessee has not disclosed any particular fact or materials at the time of original assessment and when the DCT completed such assessment on the basis of the materials disclosed by the assessee taking a particular view on a particular amount, change of such view subsequently by the concerned DCT, for whatever reason, cannot not justify reopening of assessment. This position of law has been categorically affirmed by various higher Courts in India in the above referred cases. Since it is apparent from the facts and circumstances of the case that, the impugned reassessment was in fact initiated not because of any fresh information having come to the possession of the concerned DCT, rather the same was the result of subsequent change of opinion or change of mind of the DCT being influenced by a report of local office of CAG, such change of opinion is not permitted to be the ground for reopening the assessment.
58.	11	2019	Md. Biddut alias Helal Khan Vs. The State (K. M. Kamrul Kader, J) 11 SCOB [2019] HCD 22	First Information Report, Section 19 (a) of the Arms Act, Section 342 of the Code of Criminal Procedure, Section 30 of the Special Powers Act 1974. Evidence Act	Mere declaration of the seizure list witnesses as hostile in no way cured the defect of the prosecution case. When the witnesses did not support the recovery of the arms from the possession of the convict appellant or on his showing and when the charge sheeted witnesses did not support the prosecution case and prosecution witnesses are withheld by the prosecution without any explanation, it raises adverse presumption against the genuineness of the prosecution case and the appellant entitled to get benefit of doubt under section 114 (g) of the Evidence Act.
59.	11	2019	Agrani Bank Limited, Head Office at 9/D, Dilkusha Commercial Area, Motijheel, Dhaka VS Goverrnment of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, (Mahmudul Hoque, J) 11 SCOB [2019] HCD 28	Limitation of the Executing Court.	It is well settled that the executing court can not go beyond the decree nor can it question its legality or correctness, but there is one exception to this general Rule i.e. the executing court can adjust the amount with the decree paid by the Judgment Debtors during pendency of the execution proceeding if certified by the Decree Holder. In the present case admittedly the Judgment Debtors made payment of Tk.62,50,000/- to the Decree Holder during pendency of the Suit which has not been adjusted by the Decree Holder at the time of filing of the execution proceeding. In this situation the executing court is legally entitled to adjust the aforesaid amount with the decretal amount not the amount paid before filing of the suit. It must take the decree according to its tenor but in the instant case the executing court

					travelled beyond the decree and as such the Impugned Order passed by the executing court is not in accordance with law.
60.	11	2019	Alhaj Md. Mahtab Hossain Molla Vs. The State and another	Action beyond authority is unreasonable.	It is a settled principle of law that in order to construe the actual meaning and intention of a statute it must be read as a whole and not in part or in an isolated manner. The provisions of the criminal law do not contemplate or consider the sustainability or maintainability of an isolated proceeding or case under Section 98 of the Code of Criminal Procedure. ... (Para 17) The law as it exists does not provide any scope to file or initiate a separate case or proceeding in an isolated manner in under Section 98 in the absence of a pending case or proceeding filed in pursuance of an F.I.R or complaint whatsoever under any of the provisions of the Penal Code. ... (Para 19) Section 98 only confers power upon Magistrate, empowered in this behalf to act in a particular manner to act according to the necessity appertaining to the facts and circumstances arising out of a particular case before the concerned Court arising out of an F.I.R or a complaint as the case may be. Hence a Magistrate, either Executive or Judicial as the case may be, to be able to act in accordance with the provisions of Section 98 being empowered in this behalf, can only proceed under the Section in a pending case and not in the absence of a case or proceeding and the existence of a case or proceeding is a sine qua non that is, an essential condition for resorting to the provisions of Section 98 of the Code. ... (Para 20) It is true that in the case we are dealing with at present, the issue of the property not being 'stolen' or 'forged' etc. has arisen and the petitioner contended that hence the case does not fall within the mischief of Section 98 of the Code. We do not disagree with the point raised by the learned Advocate for the petitioner given that the property in dispute, that is the car not being a 'stolen' property cannot be recovered by resorting to the procedures laid down in Section 98 of the Code. Rather, in the event of a proper case being filed, the appropriate court could have passed an appropriate order in 11 SCOB [2019] HCD Alhaj Md. Mahtab Hossain Molla Vs. State & anr. (Kashefa Hussain, J) 103 respect of the property under Section 516A of the Code as deemed fit pending conclusion of the inquiry or trial or it could pass an appropriate order under Section 517 of the Code. ... (Para 23) An application under Section 98 of the Code of Criminal Procedure not being isolatedly entertainable or lawfully maintainable at all, therefore in this case the application filed under Section 98 of the Code of Criminal Procedure before the Magistrate Court is not maintainable and is liable to be dismissed not being sustainable in the eye of law. ... (Para 26)
61.	11	2019	Kamal Miah and others VS. Lakkatura Tea Co. Ltd and others (Khizir Ahmed Choudhury, J) 11 SCOB [2019] HCD 50	Rejection of Plaint. Order VII, Rule 11 read with Section 151 of the Code of Civil Procedure, 1908.	It is settled proposition that Record of Right alone does not confer title but it has got presumptive value in favour of the person in whose name Record is prepared but again the presumption can be rebutted by showing cogent evidence and proof. As such any person can take recourse of law ventilating his grievance. If somebody's name is erroneously not inserted in the record, he can take recourse to the Court of law for appropriate declaration but his claim cannot be stifled taking aid

					of Section 52A of the Registration Act or 53C of the Transfer of Property Act. A plaint can be rejected by taking recourse of Section 151 of the Code of Civil Procedure. In the instant case the plaintiff has been able to made out distinct cause which should be adjudicated by the Court of law without having buried it at its inception and hence, inherent jurisdiction cannot be invoked here.
62.	11	2019	M.N. Kamal Hossain and another Vs. The State (Bhishmadev Chakrabortty, J.)	Penal Code, 1860, Section 5(2) of the Prevention of Corruption Act, 1947, Misappropriation, Discharged, Divisional Special Judge	It also appears from the record that at the time of framing charge petitioner No.1 M.N. Kamal Hossain remained absent but charge was framed accordingly and warrant of arrest was issued. By suppressing the said fact of issuance of warrant of arrest, he moved before this Court in Criminal Miscellaneous Case No.8151 of 2008 and on 08.06.2008 obtained Rule and interim order of anticipatory bail for a limited period. The said interim order was not extended. Ultimately the Rule was discharged on 21.12.2011 and the concerned Court was directed to take necessary steps to secure his arrest. In view of the above petitioner No.1 M.N. Kamal Hossain is a fugitive from justice. He is not entitled to file this application before this Court and to get any order on it.
63.	10	2018	Bangobir Kader Siddiqui, Bir Uttom Vs. Chief Election Commissioner & ors. (Md. Ashfaqul Islam, J.) 10 SCOB [2018] HCD 84	Constitution of the People's Republic of Bangladesh, Article 102.	Any dispute whether that relates to acceptance or non-acceptance of the candidature of the particular candidate should be brought for a decision before an Election Tribunal as election dispute.
64.	10	2018	Catherine Masud & ors. Vs. Md. Kashed Miah (Zinat Ara, J.) 10 SCOB [2018] HCD 30	Motor Vehicles Ordinance, 1983	It is evident that section 128 of the MV Ordinance read with rule 220 of the MV Rules requires that the claim application is to be submitted in CTA Form within six months of the accident. However, the proviso to sub-section (3) of section 128 of the MV Ordinance authorizes the Tribunal to entertain an application after the period of six months, if the Tribunal is satisfied that the claimants were prevented by sufficient cause.
65.	10	2018	CCB Foundation Vs. Bangladesh & ors. (Farah Mahbub, J.) 10 SCOB [2018] HCD 117	Locus Standi of the Petitioner & maintainability of the Rule.	The issues being raised in the instant writ petition by the petitioner involves grave public injury as well as invasion on the fundamental right to life of the victim guaranteed under the Constitution. Accordingly, it has sought protection of this Court, the guardian and custodian of the Constitution of the People's Republic of Bangladesh, for violation of the said right by filing application under Article 102 of the Constitution for the bereaved poor family members of the 4 years old boy named Jihad who died by falling into an uncovered deep tube well pipe of Bangladesh Railway situated at Shahjahanpur Railway Colony. As such, it cannot be said that the petitioner has no locus standi on the issue in question. In other words, this Rule is maintainable so far the locus standi of the petitioner Foundation is concerned.
66.	10	2018	Eastern Diplomatic Services Vs. Anti-Corruption Commission & ors. (M. Enayetur Rahim, J.) 10 SCOB [2018] HCD 198	Anti-Corruption Commission Act, 2004	At the stage of inquiry, which is nothing but a fact finding process, there is no scope to arrive at a definite conclusion that the alleged allegation/offence will not fall within the preview of relevant Money Laundering Protirodh Ain, which is in the schedule of the Act of 2004. Moreover, to prevent corruption the commission has got wide and unfettered power. Section 17 (U) of the Act of 2004 contemplated that Commission has the power to do any such act to prevent corruption. The said provision is as under.
67.	10	2018	Farhana Akhter Liza & ors. Vs. The Islamic University & ors.	Constitution of the People's Republic of	The concept of "due process of law" involves two distinct elements. The first

			(Zubayer Rahman Chowdhury, J.) 10 SCOB [2018] HCD 92	Bangladesh, Article,102(2).	element imposes a mandatory duty upon the Authority concerned to appraise the person of the charge or offence for which a proceeding is being initiated against him. Not only that, judicial pronouncements have gone to the extent to hold that even the proposed punishment must be indicated to the person concerned at the very initial stage. The second element requires that the person, who is so charged, should be afforded an opportunity to file a reply/representation to the Authority in respect of the said allegation or charge. Non-compliance or non-observance of the second element is bound to give a "telling blow" to any subsequent action of the Authority.
68.	10	2018	Grameenphone Ltd. Vs. Chairman, First Labour Court, Dhaka & ors. (Tariq ul Hakim, J.) 10 SCOB [2018] HCD 7	The concept of Outsourcing services in Bangladesh.	Outsourcing services is a new concept in our country. Not just labour but also professional services may be procured through outsourcing. It is a process by which the recipient of service enters into an agreement with a contractor / service provider who engages persons to render services to the service recipient. In such a situation, there is employment contract between the service recipient and the service renderer. The contract exists between the service recipient and the contractor and consideration for the services are provided by the service recipient to the contractor. If the service recipient is not satisfied with the service rendered by the persons engaged by the contractor then his remedy lies for breach of the terms and conditions of the agreement against the contractor. Likewise if the contractor does not receive adequate consideration for providing his service through his appointed employees, his remedy lies against the service recipient. The service recipient is generally not concerned who renders the service to him as long as the service sought is rendered adequately. As can be reasonably expected the service recipient may set certain criteria and conditions to be observed by the service renderer and he has a discretion to reject any person through whom the service is provided by the contractor; but in all such cases the matter is governed by the contract between the service recipient and contractor. It is a contract of services as opposed to a contract of employment.
69.	10	2018	Hayetullah & ors. Vs. Abdul Khaleque & ors. (Khizir Ahmed Choudhury,J.) 10 SCOB [2018] HCD 309	Evidence Act, 1872,	In a civil proceeding both the parties have responsibility to prove their respective cases, although onus rests upon the plaintiff to prove his case but responsibility of the defendant is also there to substantiate his written statement's assertion as per section 103 of the Evidence Act. But the courts below shifted the responsibility to prove the case entirely upon the plaintiffs which cannot be sustained.
70.	10	2018	Md. Abdul Hye Vs. Government of Bangladesh (Obaidul Hassan, J.) 10 SCOB [2018] HCD 163	Enactment of Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974	1962 Constitution of Pakistan was not a Constitution in the eye of law at all, because the same was not given to the nation by the people`s representatives of Pakistan, rather the same was given by an usurper dictator abrogating the 1956 Constitution which was duly framed and adopted by the Constituent Assembly of Pakistan. Thus the Enemy Property Act [EPA] which was promulgated under a void Constitution of 1962 given by an usurper, the Pakistan Defence Rule 1965 and the Ordinance I of 1969 and its continuance under the grab of Act XLV of 1974 was a misnomer. Enactment of Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 was a historical mistake. In view of our

					observations regarding 1974 Act and 1976 Ordinance we hold that measures are likely to be needed to give proper effect of the objective of the Act, 2001 (amended in 2013) and these are the matter to be dealt with by the legislature and executive.
71.	10	2018	Md. Kawsar Shikder Vs. State (Abu Bakar Siddiquee, J.) 10 SCOB [2018] HCD 158	Narcotics Control Act, 1990 (Report of Chemical Analyzer)	There is no evidence on record to the effect that some portion of those incriminating article were being sent to the chemical analyzer for the purpose of obtaining a chemical report and no such report was marked as exhibit in such case. I have no option to hold that there is doubt so as to ascertain that those incriminating articles were Narcotics or not.
72.	10	2018	Md. Mahbubur Rahman Vs. Bangladesh & ors. (Moyeenul Islam Chowdhury, J.) 10 SCOB [2018] HCD 104	The Constitution of the People's Republic of Bangladesh,	Writ Court is also a Court of equity. It is a settled proposition of law that one who seeks equity must come with clean hands. In this case, the petitioner's hands being unclean and dirty cannot invoke the writ jurisdiction of the High Court Division.
73.	10	2018	Md. Nur Hossain & ors. Vs. Bangladesh & ors. (Md. Badruzzaman, J.) 10 SCOB [2018] HCD 299	Constitution of the People's Republic of Bangladesh, Article 102(1):	The issue whether under Article 102(1) judicial review of a decision of authority relating to terms and conditions of service of a person serving in the Republic is maintainable is no longer a res integra.
74.	10	2018	Md. Nurul Islam & ors. Vs. Charge Officer & Appeal officer & ors. (Sheikh Hassan Arif, J.) 10 SCOB [2018] HCD 234	Nullity of Record of Rights	We are in fact taken aback with surprise when we see that a government official has been empowered by this Rule 42 to nullify the course of parent law and send it back to an earlier stage for hearing afresh. The reason for such surprise is, when an Act of parliament has provided some specified forums for disposal of particular issues and has provided sequential steps to be taken one after another before different forums up to the Appellate Division of the Supreme Court of Bangladesh, an official like a revenue officer, appointed with the additional designation of Settlement Officer, can nullify everything before final publication of record of rights. When the government even does not have any power to nullify or reverse the course of parent law, since such power has not been delegated to government by the parent law, we are of the view that, even with the existence of Rule 42 empowering such revenue officer to nullify such course of parent law, any such exercise of power by such revenue officer shall be nothing but a nullity in the eye of law.
75.	10	2018	Md. Safiqul Islam & ors. Vs. Bangladesh & ors. (Tariq ul Hakim, J.) 10 SCOB [2018] HCD 1	Regularizing Posts	It is true that the petitioners cannot claim as of right to be regularized in their jobs. However, after having served the authority for 10-15 years as temporary contingent staffs they cannot be blamed to expect being regularized in their posts especially when their superior authority has been satisfied by their work and has recommended their regularization.
76.	10	2018	Md. Shamim Howlader Vs. The State. (Muhammad Khurshid Alam Sarkar, J.) 10 SCOB [2018] HCD 290	Code of Criminal Procedure, 1898, Section 561A	Section 561A the legislature enacts a special law relating to criminal offences with a view to combating the same in the society to a tolerable stage by smoothly concluding the trials of the cases under the said special law within the stipulated time. But, because of the tendency of the accused persons to remain in abscondence at the trial stage, they compel the trial Courts to delay the completion of the trial and, ultimately, the scheme of the special law gets frustrated. Until and unless the accused-turn-convicts are made to realize that non-preferring of appeals within the statutory period of 30 (thirty) days has a severe consequence of depriving themselves of the opportunity

					of challenging the trial Court's verdict, the tendency of the accused persons and their lawyers as to taking the matter lightly shall not be changed. They, at present, take it for granted that after being arrested by the police, if they file an application under Section 561A CrPC, stating some concocted reasons, they would be able to overcome the hurdle. This Court views the above prevailing situation of our country to be a fatal disease which eventually would cause collapse of the administration of criminal justice system of Bangladesh.
77.	10	2018	Article 102 of the Constitution of the People's Republic of Bangladesh.	Code of Criminal Procedure, 1898, Section 561A	Indeed, under our Constitutional scheme an aggrieved person, in order to agitate his claim and case in judicial review, can do so by invoking Article 102(1) and/or (2) depending on the nature of the grievance as well as of status of the perpetrator. Article 102(1) comes into play in relation to the infringement of any fundamental right guaranteed under Part III of the Constitution. Article 102(2) presupposes the availability of the various Writs that may be appealed to for reviewing actions and operations in the public domain, such actions being otherwise the preserve of the Executive organ of the State affecting the citizenry in their contacts and dealings with the Executive and its functionaries.
78.	10	2018	Muhammad Imrul Hasan & ors. Vs. Bangladesh & ors. (Tariq ul Hakim, J.) 10 SCOB [2018] HCD 18	Definition of Legitimate Expectation	"A person may have a legitimate expectation of being treated in a certain way by administrative authority even though he has no legal right in law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation or consistent past practice."
79.	10	2018	Naripokkho & ors. Vs. Bangladesh & ors. (Farah Mahbub, J.) 10 SCOB [2018] HCD 140	First Information Report.	FIR is an important document in the criminal law procedure, its principal object, from the informant's point of view, is to set the machinery of criminal law into motion and from the view of the investigating agency is to obtain information about the alleged occurrence and to take necessary steps to trace the accused and produce him before the court concern for trial.
80.	10	2018	Professor M. Samsul Alam Vs. Government of Bangladesh. (Naima Haider, J.) 10 SCOB [2018] HCD 205	Article 102 of the Constitution of the People's Republic of Bangladesh, Article 51 of the United Nations Convention against Corruption.	Bangladesh has a duty under international law, as laid out in Article 31 of the UNCAC, to confiscate the proceeds of crime. Article 51 of the UNCAC makes the return of assets which are proceeds of crime a fundamental principle of the UNCAC.
81.	10	2018	State Vs. Md. Manik (Bhabani Prasad Singha, J.) 10 SCOB [2018] HCD 259	Code of Criminal Procedure, 1898	On perusal of the confessional statements, no irregularities or illegalities in recording the statements are found. So, there is no difficulty to come to a finding that the confessional statements of the condemned-accused-prisoner and the other convict-accused-persons are voluntary and true and that the said statements may well form the basis for conviction of the accused-persons.
82.	10	2018	State Vs. Md. Saiful Islam & another (Md. Ruhul Quddus, J.) 10 SCOB [2018] HCD 249	Discrepancy between medical evidence and confessional statement:	In view of the above two cases of Indian jurisdiction, we can rely on the confessions of two accused, even if it gets partial support from the medical evidence. .... However, the two accused themselves confessed commission of rape and subsequent murder of the victim and if these are believed to be true and voluntary, we do not have any reason not to rely on their confessions.
83.	9	2017	ILFSL Vs. The Commissioner of Taxes 9 SCOB [2017] HCD 1	Income Tax Ordinance 1984 Article 5A of the 3rd Schedule	It appears that the leasing company being the owner of the leased out asset, used the asset for the purpose of business, i.e. leased out the property using the same as business assets and

					as such attracted by the provision of Article 5A of the 3rd Schedule of the Income Tax Ordinance 1984. It appears that the first appellate authority did not consider as to the ownership of the vehicle remaining with lessor and not with the lessee and further that the lessor deals in the business of leasing out the vehicle to the lessee who operates the vehicle for his business. But the business of the lessor remains in the status of using the vehicle for the purpose of business of lease. Therefore these two pre-condition having been fulfilled in the instant case, the Assessee-applicant is entitled to the normal depreciation allowance and the initial depreciation allowance on the vehicle it has leased out to different lessee, being their customer.
84.	9	2017	Md. Nur Islam Vs. Securities and Exchange Commission & ors. 9 SCOB [2017] HCD 6	Securities and Exchange Ordinance, 1969, Section 17, 26; non-speaking order	On consideration of the materials on record, it appears to us that the impugned order dated o8. 12. 2011 can not be said to be unlawful merely because it is without elaborate reasoning and non-speaking one. The impugned order appears to be otherwise sustainable.
85.	9	2017	Mainul Hossain & anr Vs. Bangladesh & ors. 9 SCOB[2017]HCD 11	The principles of natural justice; audi alteram partem; nemo debet esse judex in propria causa; duty to act fairly; right to a fair hearing; principle of reasonableness	The authority cancelled the lease of the petitioners and in the same breath called upon them to appear before the authority on 12.04.2011 with necessary valid papers, if any. What we are driving at boils down to this: the authority ought to have afforded the petitioners an opportunity of being heard first and thereafter on perusal of the inquiry report and other materials, the authority could have cancelled the lease of the petitioners with reference to the case land; but the authority chose to cancel the lease of the petitioners by keeping them in the dark and thereafter asked them to appear before the authority on a certain future date with their valid papers, if any. To be precise, there is no point in affording the petitioners an opportunity of being heard after cancellation of the lease. Generally speaking, the hearing of the petitioners by the authority should have been a pre-decisional phenomenon; it should not be a post-decisional phenomenon.
86.	9	2017	State & ors vs. Md. Sukur Ali & ors 9 SCOB[2017]HCD 18	Code of Criminal Procedure, 1898 Section 164; Penal Code, 1860 Section 304	Whenever it is noticed that, all the legal mandatory formalities in recording the confessional statement are duly observed and the Magistrate; who recorded the confessional statement is satisfied that the confession is voluntary and free from all taint-in that case, such confession can be the sole basis of conviction of the confessing accused.
87.	9	2017	Md. Komar Uddin Vs. State & another 9 SCOB[2017]HCD 28	Negotiable Instruments Act, 1881, Section 138, 141	The learned advocate appearing on behalf of the convict-appellant took me to the postal receipt and strenuously argued that the postal seal reveal that the same has been received by the postal clerk on 23.03.2008 where as the postal clerk put his signature on the same showing receiving date as 12.03.2008. He further adds that those anomalies are sufficient to show that the postal receipt has been created for the purpose of this case. I have gone through the postal receipt and seen that the anomalies of those dates are palpable on the face of such receipt. It is the receiving clerk of the post office who made all those anomalies, is the best person who can say as to why and under what compelling circumstances he put this date under his signature and also as to why he put seal showing another date and without examining him, it is not possible to arrive at a concrete decision in this respect. In such a state of affairs the court can

					arrived such a decision which favoured the convict-appellant. Thus, I have no option but to hold that the convict-appellant is entitled to get benefit of the doubt regarding such service of notice.
88.	9	2017	Raghib Rauf Chowdhury Vs Bangladesh & ors 9 SCOB[2017]HCD 34	Constitution of Bangladesh, Article 65, 95; Appointment process of Judges in the higher judiciary; Consultation with the Chief Justice	In the process of selecting the persons for elevation to the High Court Division the Chief Justice may, if feels indispensably necessary consult or share his view with at least two of his senior most brother Judges in the Appellate Division and two of the senior most Judges of the High Court Division as well in forming ‘opinion’ and also to ensure the recommendation appropriate, effective and transparent. After advancing the recommendation expressing opinion by the Chief Justice there should not be any room to disapprove or censure it unless the persons recommended is found by the executive to have an antecedent involving anti-state or anti-social subversive activities. The fate of the recommendation of the Chief Justice expressing opinion should not be sealed and scrapped for no justified reason, in view of observation made in the ‘ten judges case’ by the Appellate Division of our Supreme Court.
89.	9	2017	State & ors Vs. Mufti A. Hannan & ors 9 SCOB[2017]HCD 52	Code of Criminal Procedure, 1898 Section 164; Evidence Act, 1872 Section 10, 17, 30; Retraction of the confession; Penal Code, 1860 Section 120A; Cognizance of Offence	Recording of a statement of an accused beyond the period of office hour can not be a plea to hold that the said statement is not true and voluntary. If the said statement is found that same was recorded by the concerned Magistrate having compiled with all the provisions of law then there is no room to say that the said statement is not true and voluntary.
90.	9	2017	Mahmudur Rahman Vs Bangladesh & ors 9 SCOB[2017]HCD 119	Constitution of Bangladesh Article 35; Code of Criminal Procedure, 1898 Section 198, 403, 526, 561A; Penal Code, 1860 Section 500 and 501	In view of above facts and circumstances of the case, since, apparently and admittedly, no prosecution has been concluded against the petitioner and that the petitioner has neither been convicted or acquitted in any criminal case for the offence in question, namely, the offices punishable under Sections 500 and 501of the Penal Code, we are of the view that, the petitioner does not have any case before this Court under writ jurisdiction to invoke Article 35(2) of the Constitution or other provisions of the Constitution or Code of Criminal Procedure. Besides, since the petitioner does not have any particular case of enforcement of fundamental rights under any of the above mentioned Articles, the writ petition is not maintainable.
91.	9	2017	Rokeya Begum Bina & ors Vs. Habib Ahsan & ors 9 SCOB[2017]HCD 127	Code of Civil Procedure, 1908 Order 7, Rule 11; Registration Act, 1908 Section 17B	It is crystal clear from the reading of the plaint that as per sub-clause (ii) of Clause (a) of Section 17B of the Registration Act, the plaintiff ‘opposite parties nor present the contract for sale itself for registration within six months from the date of coming into force of that section i.e. 1st July, 2005 neither instituted a suit for specific performance of the contract within six months next after the expiry of the period mentioned in clause (a). So, after the expiry of the period mentioned in clause (b) of section 17B, the contract for sale (affidavit dated 03.04.1995) in question stand void.
92.	9	2017	Hossain Ali & ors Vs. Bangladesh & ors 9 SCOB[2017]HCD 132	State Acquisition and Tenancy Rules, 1955 Rule 31, 42, 42A; Record of Rights; Jurisdiction of Settlement Officer	The Settlement Officer appointed with the additional designation of Assistant Settlement Officer may at any time before final publication of the record-of-rights exercise his jurisdiction under rule, 42 of the Rules, 1955.

93.	9	2017	Osman Gazi Chowdhury Vs. Artha Rin Adalat & anr 9 SCOB[2017]HCD 140	Artharin Adalat Ain, 2003, Section 6, 19, 41; Maintainability of Writ Petition against a decree or post-decree order passed by Artharin Adalats	It is the clear intention of the Legislature that a party to an Artharin Suit if aggrieved by a decree, must prefer an appeal. Since the Ain, 2003 is a special law with an overriding provision over other laws and has prescribed a special procedure, there is no scope to bypass the appellate forum, if the forum under Section 19(2) of the Ain, 2003 against an exparte decree is already not availed of by the party.
94.	9	2017	Shetu International Pvt. Ltd & ors Vs. Artha Rin Adalat-2, Dhaka & anr 9 SCOB[2017]HCD 157	Artha Rin Adalat Ain, 2003, Section 6(2), 7(1)	The word ‘Bc‘ma‘ as appears in the context of Section 7(1) bears reference to a scenario emerging when the Court which in its considered opinion thinking it just and expedient for a notice to be published in a national daily and in a local newspaper, if there be any, for ends of justice, and making an order to publish a notice at the cost of the plaintiff. But in the present case the plaintiff ‘Respondent No.2 itself took step under section 7(1) of the Act on its own motion on the date fixed for return of summons and acknowledgement receipt after service upon the defendants without waiting for the report of the Process Server and Order of the Court to that effect. It is noted that the summons in a suit shall be served by the Process Server simultaneously through postal department, and in evidence of the sending of the summons through post the postal receipt thereof must be tagged with the record. But in the present case no summons was served through Process Server or by post nor any attempt was made to serve the notice/ summons upon the defendants. Moreover, no Order has been passed by the Court necessitating publication of summons in the daily newspaper. Rather publication in the newspaper ensued at the behest of and as desired by the plaintiff which, in this Court‘s view is contrary to the provisions of Section 7(1) of the Act.
95.	9	2017	Md. Mohitur Rohman Choudhury & ors Vs. Md. Abdul Kuddus Miah & ors 9 SCOB[2017]HCD 163	Limitation Act, 1908 Section 15; Code of Civil Procedure, 1908 Order IX rule 13	Application for execution of a final decree or order is to be made within 3 (three) years from the date mentioned in 2nd Column of Article 182 of the Limitation Act subject to some exceptions as detailed in the 3rd Column read with provisions of section 15 of the Act inasmuch as Article 182 makes no provision for fresh limitation from a final order passed on an application under Order IX rule 13 of the Code. In other words if no stay order or injunction is passed staying the operation of the decree or order under section 15 or no situation arises as per the 3rd Column of Article 182 the decree or order would keep open for execution and time would run from the date of final decree or order. A bare reading of Article 182 of the limitation Act also suggests that an application under order IX rule 13 of the code does not come within the meaning of applications mentioned in clause 5 of column 3 of Article 182 of the Limitation Act to save limitation. Accordingly, pendency of a case under Order IX rule 13 of the Code of Civil Procedure for setting aside an ex-parte decree cannot extend the period of limitation for filing execution case.
96.	9	2017	Kazi Helall Islam & ors Vs. Kazi Roksana Islam & ors 9 SCOB[2017]HCD 167	Code of Civil Procedure, 1908, Order 40 Rule 1: Partition Suit	As we have mentioned before there is a prima-facie apprehension of danger to the property, which is apparent under the circumstances. Moreover, since the suit land is in possession and control of the defendant-appellants it is quite probable that pending final determination of the rights of the

					parties, the party in possession and control might abuse such possession and control and the sisters may be deprived of their rights. Alienation of mesne-profits which in this case are primarily the rents received by the defendants from the tenants in the disputed property may also result in wastage of the property and therefore entails a source of danger of alienation of the property before final determination of the rights of the parties to the Partition Suit. Upon such considerations we feel that the Court below judiciously and by exercising its discretion very correctly granted the prayer of the plaintiffs under Order 40 Rule 1 for appointment of receiver to the suit property.
97.	9	2017	Zobeda Khatoon & anr Vs. State & anr 9 SCOB[2017]HCD 173	Criminal Law Amendment Act, 1958 Section 6; Code of Criminal Procedure, 1898, Section 222; Framing of Charge	It also appears from the FIR that the alleged occurrence took place in between January 2004 to November 2006. The lodging of the FIR and framing of charge covering the whole period is permissible under the provisions of law of sections 6 (IB) of the Criminal Law Amendment Act, 1958. A single case can be filed and trial may be proceeded by framing charge for more offences, which has been done in the present case. The provisions of section 222 (2) of the Code is no manner of application in this case.
98.	8	2016	Shahjibazar Power Company Ltd. Vs. Bangladesh & ors 8 SCOB [2016] HCD 1	Statutory contract; Capacity of sovereign; Commercial contract; Maintainability of Writ petition	From the Contract, it transpires that it has not been entered into by BPDB in exercise of statutory power and so, it cannot be said that the contract with the statutory body i. e. BPDB is a statutory contract so, as to invoke writ jurisdiction. Further we have already seen that the contract is not entered into by the Government in the capacity of sovereign. Moreover, the Contract is purely a commercial contract for purchasing electricity on rental basis. Further, the requirements as settled by the Appellate Division in the above referred case are not fulfilled. For the reasons discussed hereinbefore, we are constrained to hold that the instant writ petition is not maintainable.
99.	8	2016	Kazi Monirul Haque Vs. Bangladesh & ors 8 SCOB [2016] HCD 15	Artha Rin Adalat Ain, 2003, Section 28; Section 33; Artha Jari case	Section 28(4) of the Ain clearly stipulates that if a new Execution case is filed after the expiry of the 6 years from the date of filing of the 1st Execution case, the 2nd case shall also be barred by limitation. In our view, section 28(4) of the Ain contemplates and takes into account the situation were the 1st Execution case, is neither concluded nor disposed of within the period of 6 years.
100.	8	2016	Abdul Kader Patwary & ors Vs. State & another 8 SCOB [2016] HCD 19	Code of Criminal Procedure, 1898 Section 265D; Framing of Charge	It has now been settled by our apex Court that, at the time of framing charge the Court concern is required to consider only the materials of the prosecution but not the materials submitted by the defence. In the instant case, it appears that, the learned Additional Sessions Judge has not committed any illegality in framing charge against all the accused persons.
101.	8	2016	SJBKBSS Ltd. Vs. Sylhet City Corporation & ors. 8 SCOB [2016] HCD 23	Legitimate Expectation	In any view of the matter, the members of the petitioner-samity are not at fault. Their legitimate expectation, in all fairness, should be fulfilled by the Sylhet City Corporation Authority by way of constructing the proposed market by removing the sheds from the Bus Terminal. Undeniably, the Sylhet City Corporation Authority has made a commitment to the petitioner-samity to make the proposed construction of the market at the site after removal of the sheds therefrom.

102.	8	2016	Md. Rofiqul Islam & ors Vs. Md. Khalilur Rahman & ors 8 SCOB [2016] HCD 29	Record of rights; Section 90 of the Evidence Act, 1872	Record of right is evidence of present possession and registered kabala is an evidence of title. The registered document will prevail over the records of rights and would remain in enforce until and unless, such kabala is cancelled by an appropriate civil court. The registered deed dated 13.05.1965 is an old document more than 30 years produced from proper custody presumed under Section 90 of the Evidence Act that it was duly executed and genuine documents.
103.	8	2016	Md. Ibrahim Vs. State 8 SCOB [2016] HCD 35	Nari-O-Shishu Nirjatan Daman Ain, 2000 Section 10; None cross-examined the witnesses	There is no further burden of proof when the assertions of the witnesses remain unchallenged. In the instant case the convict-appellant failed make out his defence on cross-examining the witnesses. On perusal of the aforesaid position of the facts, circumstances and other materials on record nothing cogent could be elicited to disbelieve the witnesses. Thus I find that there is no scope to interfere into the findings and decision as has been arrived by the learned Judge of the Trial Court.
104.	8	2016	Begum Khaleda Zia Vs. Anti-Corruption Commission & ors 8 SCOB [2016] HCD 40	Question of laws and facts; Applicability of Emergency Power Rules-2007; The Anti Corruption Commission Act, 2004, Section 17; Immunity	The Constitution has not given any immunity to the prime Minister or Cabinet in respect of any criminal offence. There is neither any constitutional nor any statutory or legal bar on A.C.C to conduct any enquiry in respect of allegation of Commission of offences mentioned to the schedule of the A.C.C Act, 2004 and schedule to the Criminal Law Amendment Act-1958. Therefore, we are of the view that not only on the basis of any complaint but A.C.C itself is legally empowered under section 17 of the A.C.C. Act-2004 to conduct any inquiry or investigation.
105.	8	2016	Fatema Enterprise Vs. Bangladesh &ors 8 SCOB [2016] HCD 59	Whether a matter of law of contract can be looked into in a writ jurisdiction; Basic principle of offer and acceptance; Principles of legitimate expectation; Grounds of judicial review	The crux of the issue is as to whether after receiving the consideration value in the form of earnest money as has been stipulated by the respondents through their own valuation and tender can be changed. Although, this is a matter of law of contract, however, since Government is a party, so this can be looked into in a writ jurisdiction. The basic principle of offer and acceptance is the offer is binding upon the offeror (proposer) the moment the offeree (acceptor), puts the acceptance into motion. In the instant case, the offer and acceptance both were complete since the tender was invited (offer) the petitioner participated and it was accepted by the respondent No. 2 and part consideration was also paid in the form of earnest money and in such circumstance the respondents, i.e. the offeror Government has no other option left except transferring the land in favour of the petitioner. The property in the goods in fact passes over to the buyer when the sale is complete and in the instant case the sale became binding from the moment the payments were made in compliance with the tender.
106.	8	2016	Golam Md. Faroque Uddin & ors Vs. Bangladesh & ors 8 SCOB [2016] HCD 67	Section 16A of the Income Tax Ordinance, 1984; Section 36 of the Finance Act, 2013; Surcharge; Constitution of Bangladesh, Article 8, 10, 27	Though the term surcharge is not specifically mentioned in the Constitution or not defined in the said Ordinance, the basic concept of surcharge was always there in our Constitution and the said Ordinance. The only difference being that while the Indian Constitution, under Article 271, specifically has mentioned the word surcharge, our Constitution has not mentioned the same in such specific way. Not only that, upon examining the dictionary meaning of the word impost as used under the definition of taxation as provided by our Constitution under Article 152, there is

					no semblance of doubt that the Parliament has always had the plenary power to legislate provisions for imposition of ‘additional tax’, ‘extra charge’ or ‘impost’, through whatever terms it may be called, by which some additional charges may be levied on the tax payers in addition to their ordinary tax payments. In consideration of the above wide definition of ‘taxation’ as given by our Constitution and the definition of term ‘Tax’ as provided by the relevant provision of the said Ordinance, we are, therefore, of the view that the power of imposition of surcharge, as has been done by the impugned provisions, was very much within the plenary power of legislation of the Parliament.
107.	8	2016	Energy Prima Ltd. Vs. Bangladesh & ors 8 SCOB [2016] HCD 84	Constitution of Bangladesh Article 102; The Arbitration Act, 2001 Section 7; Restriction of judicial intervention in matters covered by arbitration agreement	In the present case, clause 19.2 of the contracts dated 16.01.2008 entered into between the petitioner and the BPDB contains an arbitration clause stating that the arbitration shall be conducted in accordance with the Arbitration Act (Act No. 1 of 2001) of Bangladesh as at present in force and the place of arbitration shall be in Dhaka, Bangladesh, therefore, section 7 of the Arbitration Act, 2001 restricts judicial intervention in matters covered by arbitration agreement. Petitioner is trying to interpret the contract in the writ petitions which is impermissible, particularly when the petitioner is having a remedy to go for arbitration under the contract signed by the petitioner. Petitioner having signed contract with open eyes after reading the terms and conditions, it is unconscionable to raise these kinds of contention in the writ petitions.
108.	8	2016	Shahida Khatun & ors Vs. Chairman, 1st Court of Settlement & anr 8 SCOB [2016] HCD 93	The Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972, Article 7; Specific performance of contract; The Bangladesh Abandoned Buildings Supplementary Provision Ordinance, 1985, Section 5	In the present case the Petitioners or their vendor admittedly was not in possession of the property in question at the relevant time, they entered into the possession of the property in the year 1984. Since the property was declared abandoned under the provision of P.O. 16 of 1972, question of service of notice under Article 7 upon the Petitioner or their vendor who were not in possession, active control, supervision and management of the property at the relevant time does not arise. Moreover, decree in a Suit for Specific performance of contract does not reflect a substantive determination of any issue regarding the abandoned character of the property
109.	8	2016	Md. Sirajuddwla Vs. State & Anr 8 SCOB [2016] HCD 100	Article 35 (2) of the Constitution of Bangladesh; Section 403 of Code of Criminal Procedure, 1898; The principle of double jeopardy; Code of Criminal Procedure, 1898 Section 344; Negotiable Instruments Act, 1881, Section 138; Artha Rin Adalat Ain, 2003, Section 41; Code of Criminal Procedure, 1898, Section 344, 561A	In the case in hand, a sentence of fine under section 138 of the Act, 1881 may result in a proceeding of execution of decree (section 386(3) of the Cr.P.C.). Again, the same person may face an execution of decree proceeding under the Artha Rin Adalat Ain, 2003 for the same loan transactions which may together exceed the actual claimed amount. If the accused decides to file appeal against the sentence of fine as well as the decree passed in Artha Rin Suit, he has to deposit 50% of the amount of the dishonoured cheque and 50% of the decretal amount which in aggregate would almost cover the claimed amount. This may lead to unjust enrichment and thus, the inconvenience through legal process may lead to absurdity. The ends of justice and fairness demand that the process of law must not be allowed to cause or result in ‘absurd inconvenience’. ... For the reasons discussed above, the case in hand, in our view, falls within the category of

					rarest of rare cases where an order of stay of the criminal proceedings under the Act, 1881 during pendency of the Artha Rin Suit which are between the same parties and over the same loan transactions, should be passed to give effect to section 344 of the Cr.P.C. in order to prevent abuse of the process of the Court and to secure the ends of justice.
110.	8	2016	Badiul Alam Majumdar & ors Vs. Information Commission & anr 8 SCOB [2016] HCD 110	Badiul Alam Majumdar & ors Vs. Information Commission & anr 8 SCOB [2016] HCD 110	Registration Rules, 2008 framed under Article 94 of the Representation of the People Order, 1972; Right to Information Act, 2009, Section 9
111.	8	2016	F.J. Geo-Tex (BD) Ltd Vs. NBR & ors 8 SCOB [2016] HCD 132	Income Tax Ordinance, 1984 Section 135(1) and 143(2)	The mandatory provision of Section 135(1) of ITO was not followed by the respondents prior to exercise of power under section 143(2) in freezing the bank account of the assessee-petitioners. In the instant matter the provisions of Section 143 of ITO can be resorted to only after the preceding of provisions of Section 135(1) have been complied with, but the Respondents in this case, circumvented the provisions of the law by outrightly ignoring the mandatory provisions to issue notice under the provisions of Section 135 of the Ordinance, which they cannot lawfully do. The Respondents actions in the instant case are without any lawful authority and therefore has no legal effect.
112.	8	2016	Md. Tasli alias Taslim & anr Vs. State 8 SCOB [2016] HCD 140	Natural and competent witness; Evidence Act, 1872 Section 8	It is gathered from the evidence of P.W.2 that out of enmity the accused Alfazuddin and Tasli @ Taslim being armed with deadly weapon like dagger ‘Dao’ etc. came at the P.O. house and dealt indiscriminate dagger and dao blows on the person of the victim. Such facts clearly speak about their very motive and intention to kill the victim Aziron. Immediately after the occurrence, the Convict-Appellant Alfaz Uddin and Tasli @ Taslim disappeared from the locality, which indicates their guilt and that is relevant under section 8 of the Evidence Act.
113.	8	2016	Aleya Begum & ors Vs. Mir Mohsin Ali & ors 8 SCOB [2016] HCD 147	Partition Suit; Impleading;	In our view the petitioners will not be prejudiced for not impleading them parties because as legal heirs, they are entitled to get the shares of their predecessors. Even a non contesting party, who has got share in the partible property, can pray for allotment of saham on payment of proper court fees before drawing up the final decree
114.	7	2016	Ahmed Service Ltd Vs Commissioner of Taxes (A.F.M Abdur Rahman, J) 7 SCOB [2016] HCD 1	Income Tax Ordinance, 1984 Section 35(4); method of accounting; computation of income profit and gains of company	Since the DCT concern did not raise any dissatisfaction as to the method of accounting and did not pin point any of the defect in the accounts, the two lower appellate authorities were required to consider the said question and decide the appeals before them in its true perspective. But that has not been done by the two lower appellate authorities and as such the questions as have been formulated in the instant three Income Tax Reference Applications are required to be answered in negative and in favour of the Assessee-applicant.
115.	7	2016	Z. I. Khan Panna Vs Bangladesh & ors (Moyeenul Islam Chowdhury, J) And (Md. Ashraful Kamal, J) 7 SCOB [2016] HCD 7	‘k‘b A‘ik‘e c‘uj‘‘‘‘ BCe, 2003 (2003 p‘el 1 ew BCe); Article 46 of the Constitution; indemnity; torture on the victims in the custody of the joint forces; Supremacy of the Constitution; Essence of the rule of law; Compensation	There cannot be any blanket indemnity of the persons accused of perpetration of crimes on the victims in their custody in view of the clear and unequivocal language of Article 46. Precisely speaking, indemnity can be given to the persons concerned for the maintenance or restoration of order in any area meaning thereby in any specific area in Bangladesh as provided by Article 46 of the Constitution. In fact, there is no scope for wholesale indemnity of the

					members of the joint forces for the maintenance or restoration of order throughout the length and breadth of the country in terms of Article 46 of the Constitution. On this count, the impugned Act No. 1 of 2003 cannot be upheld.
116.	7	2016	State Vs Md. Nurul Amin Baitha & anr (Syed Md. Ziaul Karim, J) 7 SCOB [2016] HCD 40	Evidence Act,1872, Section 106; Nari-O-Shishu Nirjatan Daman Ain, 2000, Section 11(ka); Penal Code, 1860, Section 302: Fundamental principles of criminal jurisprudence and justice delivery system; Wife killing case	Presence of the accused Baitha at the material time is supported by the evidence on record. Thus the death of the deceased was in the special knowledge of the accused Baitha. He knew how she met with death. Ordinarily an accused has no obligation to account for the death for which he is placed on trial. But in a case like the present one where the accused has special knowledge of the death of the deceased, under section 106 of the Evidence Act, he is under obligation to explain how the deceased died. If he fails to explain the death of the deceased or if his explanation is found false the irresistible inference would be that none besides him caused the death of the deceased.
117.	7	2016	Md. Bazlur Rahman Vs Shamsun Nahar & ors. (S. M. Emdadul Hoque, J) 7 SCOB [2016] HCD 61	Family Courts Ordinances, 1985, Section 9(6); The code of civil procedure, 1908, Section 115(1)	It appears that both the courts after proper consideration of the evidence on record rightly opined that since the petitioner himself received the summons so without filing any appeal against the experte judgment and decree he cannot get any relief.
118.	7	2016	Sree Paresh Chandra Pramanik vs Md. Mokbul Hossain & ors (Borhanuddin, J) 7 SCOB [2016] HCD 64	State Acquisition and Tenancy Act, 1950, Sub-section 10 of section 96; Succession Act, 1925, Section 28; computing of degrees of kindred; three degrees by consanguinity; Pre-emption Case	Section 28 of the Indian Succession Act, 1925, provides mode of computing of degrees of kindred in the manner set forth in the table of kindred set out in schedule 1. From the table of schedule 1, annexed with the counter affidavit, it is evident that brother-in-law is not a relation within three degrees by consanguinity. Pre-emptee opposite party no.1 being not a relation within three degrees by consanguinity of the donor is not entitled to get protection of Sub-section 10 of section 96 of the State Acquisition and Tenancy Act.
119.	7	2016	Mst. Anjuara Khanam @ Anju Vs State (M. Moazzam Husain, J) 7 SCOB [2016] HCD 67	Nari-o-Shishu Nirjaton Damon Ain, 2000; Section 18 and 27; Power of tribunal to entertain naraji;	The Tribunal has been clothed with power wide enough to cover all the power of a Magistrate and of the Sessions judge rolled together in ignoring investigation-report with concomitant power to entertain naraji and sending back the case for further investigation or, (where practicable) judicial inquiry. Sub-section (1) and (1Ga) of section 27 read with section 18 goes to show that the Tribunal is further equipped with power more robust than that of an ordinary criminal court in taking cognizance absolutely on its own satisfaction, albeit by assigning reason, gathered from any materials, irrespective of naraji, or information received in disregard of the final report submitted by police or the person authorized by the Government in this behalf. The enormously unqualified power of the Tribunal to take cognizance of offences on its own satisfaction in total disregard of everything means by necessary implication that the Tribunal enjoys power to take into consideration anything including the naraji-petition for its satisfaction without any formality attached to it in general law.
120.	7	2016	State & ors Vs Julhash & ors (Soumendra Sarker, J) 7 SCOB [2016] HCD 84	Code of Criminal Procedure, 1898; Section 164; Confessional Statement;	The spirit of law on confession under section 164 of the Code of Criminal Procedure with regard to the confessional statement of a accused is such that a confession is a direct piece of evidence which is substantial and such statement of any accused can be relied upon for the purpose of conviction and no further corroboration

					is necessary if it relates to the confessing accused himself; provided it is voluntary and also free. A free and voluntary confession under the purview of this section deserves highest credit, because it is presumed to flow from highest sense of guilt. If the court believes that the confession is voluntary and free, there is no legal embargo on the court for ordering conviction. If it is found that the Magistrate appears to have recorded his satisfaction as to the voluntariness and spontaneous nature of the confession of the accused, in that case; such confession cannot be vitiated from illegality and this type of confession alone is enough to convict the confessing accused.
121.	7	2016	Youngone Synthetic Ind. Ltd & anr Vs Commissioner of Taxes (Sheikh Hassan Arif, J) 7 SCOB [2016] HCD 98	Income Tax Ordinance, 1984 Section 28, 29; Wears and tears of assets; depreciation; written down value	In calculating the total income in a concerned assessment year, the wears and tears of assets, which have been used for the purpose of the business and to earn revenue, have to be taken into consideration. From the context of the said concept, the relevant provisions have been incorporated in our statute book, namely Income Tax Ordinance, 1984. Thus, while Section 28 of the said Ordinance classifies the income from business and profession, Section 29 provides for the allowances to be deducted from the said income while calculating the same for the purpose of assessment. Clause(VIII) of sub-section (1) of Section 29 provides that the depreciation of building, machinery, plan or furniture etc. of the concerned assessee, which have been used for the purposes of business or profession, shall be allowed as admissible under the Third Schedule to the said Ordinance. Again, Paragraph-2 of the said Third Schedule, in particular sub-paragraph (1) of the same, provides that in computing the profits and gains from the business or profession, an allowance for depreciation shall be made in the manner provided hereinafter. This Paragraph 2 is followed by a Table under Paragraph 3 prescribing fixed rates of depreciations to be allowed on the ‘written down value’ of any particular assets used in the business.
122.	7	2016	State & anr Vs Aynal Haque & anr (Bhabani Prashad Singha, J) 7 SCOB [2016] HCD 106	Nari-O-Shishu Nirjatan Daman Ain, 2000, Section 11(ka); Value of circumstantial evidence in a wife killing case	In a wife killing case, there could be no eye-witness of the occurrence, apart from the inmates of the house who may refuse to tell the truth, the neighbors may not also come forward to depose. The prosecution is, therefore, necessarily to rely on circumstantial evidence.
123.	7	2016	Orascom Telecom Bangladesh Ltd Vs. BTRC & ors (Md. Ashraful Kamal, J) 7 SCOB [2016] HCD 115	Bangladesh Telecommunication Act, 2001, Section 55(3); spectrum assignment fee; VAT Act, 1991, Section 2, 3 (N), and 5:	The issue of applicability of VAT and/or liability of the petitioner company to pay the VAT has no relation whatsoever with regard to the payment of license renewal fee and spectrum assignment fee. The petitioner company is bound to pay the net amount of the license renewal fee fixed by BTRC, without any kind of deduction.
124.	7	2016	Md. Jahangir Alam & ors Vs D.C Munshiganj & ors (Mohammad Ullah, J) 7 SCOB [2016] HCD 130	Protection and Conservation of Fish Act, 1950, Section 5(2)(b) read with section 5A; Mobile Court Ain, 2009; Protection and Conservation of Fish Rules, 1985; Article 40 and 42 of the Constitution	It appears that the powers conferred under section 5(2)(b) read with section 5A on an Executive Magistrate extend to conviction and sentence and also to confiscation of the article(s) or thing(s) used in the commission of the offence. Besides, the Act or the Rules does not speak of putting the factories under sealed lock and key. Therefore in putting the factories under sealed lock and key the Executive Magistrate has clearly exceeded the authority conferred upon him which has not empowered him to do so under the Act, the Ain and the Rules. The orders of sealing the factories of the petitioners,

					by the Executive Magistrate is also violative of the fundamental rights of the petitioners guaranteed under Article 40 and 42 of the constitution with regard to their lawful business.
125.	7	2016	Mainuddin Ahammed Vs Bangladesh & ors (Muhammad Khurshid Alam Sarkar, J) 7 SCOB [2016] HCD 134	State Acquisition and Tenancy Act, 1950, Section 144B; What to be fulfilled to direct excision of a fraudulent entry; record-of-rights,	During conducting the revisional survey under Section 144 of the SAT Act, till final record-of-rights are published, no suit lies in any civil Court challenging any action or Order of the Settlement Officer as provided in Section 144B of the SAT Act and, thus, the only option available for respondent no. 12 was to take recourse to the provision of Rule 42A of the Tenancy Rules.
126.	7	2016	Asoke Das Gupta Vs Ministry of Finance & ors (Kashefa Hussain, J) 7 SCOB [2016] HCD 148	Gift Tax Act, 1990, Section 4(ja); Income Tax Ordinance, 1984, Section 53M;	Section 53M Explanation 1 is contrary to the rest of the provisions of the ITO, 1984, being against the sprit and intent of the Ordinance and also contrary to the Section 4 of Gift Tax Act, 1990. Therefore the impugned collection of advance tax against transfer of shares to the daughter of the petitioner is unlawful and without lawful authority.
127.	7	2016	Sonali Bank Vs. Md. Abu Baker Sarker (S.M. Mozibur Rahman, J) 7 SCOB [2016] HCD 156	Artha Rin Adalat Ain, 2003, Section 50;	The court has no power to exempt the defendant respondent from the liability of paying up interest however high rate it may be ... since the financial institution bank itself preserves the exclusive right to exempt any-body from payment of interest of loan they sanctioned.
128.	7	2016	Afangir @ Kalu Vs. The State (Md. Farid Ahmed Shibli, J) 7 SCOB [2016] HCD 161	Explosive Substance Act, 1908, Section 4/6	Mere knowledge of an accused or his equivocal disclosure about existence of bomb-making powders during his police custody shall not expose him to any criminal liability of possessing or controlling that illegal substance.
129.	6	2016	Anowar Ahmed & anr Vs State 6 SCOB [2016] HCD 1	Code of Criminal Procedure, 1898	The customs authority being satisfied about the import documents, released the imported cloths from customs station and the petitioners handed over the imported cloths to the importer as C and F Agent from the Custom Area and place of business of the petitioners is the Customs House or Custom Area as per section 2(i) and 207 of the Customs Act, 1969 and Rule 2(b) of the Rules 1986 and consequently petitioners are in no way responsible for the alleged offence. The petitioners as agent cannot be held liable for the work of the Principal and thus the petitioners committed no offence within the meaning of sections 420/468/469/471/34 of the Penal Code.
130.	6	2016	Bright Textile Ind. (Pvt.) Ltd Vs Commissioner of Taxes 6 SCOB [2016] HCD 5	Income Tax Ordinance, 1984 Section 35, 83	The DCT concern, prior to discarding the book versions of the accounts has to raise dissatisfaction as to the method of accounting as to its cumbersomeness that the true and correct income of the Assessee-applicant cannot be deduced therefrom or to pin point the defect in the accounts; else the DCT concern has to accept the book version of the accounts as submitted by the Assessee-applicant and audited and certified by the chartered accountant.
131.	6	2016	Md. Saidur Rahman Sarker Vs Bangladesh & ors 6 SCOB [2016] HCD 13	Election Commission independent decision	It does not appear that the Election Commission, after admitted declaration of schedule for holding election of Botlagari Union, has taken independent decision of its own considering the facts and circumstances of the case. Rather, it passed the impugned order at the proposal/direction of the Ministry of Local Government, Rural Development and Co-operatives. Therefore, it cannot be said that the impugned order passed by the Election Commission is lawful.
132.	6	2016	M. A. Hashem Vs. Artha Rin Adalat, Dhaka & ors 6 SCOB [2016] HCD 19	Statutory privilege; The right of redemption of the mortgagor;	A statutory privilege is a nascent right reserved to an individual person but this privilege is lost once he/she himself

				Artah Rin Adalat Ain, 2003, Section 33, 38, 45	infringes it or abandons it voluntarily. The Writ Petitioner in fact has abandoned the statutory privilege by willfully and deliberately refraining from depositing the balance amount of bid money within the prescribed period of limitation. By filing the application seeking permission to deposit the balance 75% bid money instead of depositing the amount directly, the auction purchaser relinquished his known statutory right as auction purchaser and waived all his rights to the property in question as well as the earnest money deposited by him.
133.	6	2016	Dr. Moazzem Hossain Vs Bangladesh & ors 6 SCOB [2016] HCD 34	Writ Court; Court of equity	Will the petitioner continue to suffer loss of his seniority through no fault of his own? Is the Writ Court powerless in this regard? In this connection, it may be pointed out that the Writ Court is also a Court of equity. The principles of natural justice, equity and good conscience demand that the seniority of the petitioner be restored at least from the date of promotion of his colleague Dr. Md. Jubair Bin Alam to the post of Personal Professor on 06.11.2004 who admittedly made his application therefor on 28.12.2003 which was subsequent to the date of making of the application by the petitioner on 21.12.2003. In this way, the injustice done to the petitioner, according to us, can be remedied.
134.	6	2016	State Vs Kalam alias Abul Kalam 6 SCOB [2016] HCD 43	Dying declaration; Motive; Abscondence	A dying declaration, whether written or oral, if accepted by the Court unhesitatingly, can itself provide a strong basis for convicting an accused.
135.	6	2016	Barakatuallah Electro Dynamics Ltd Vs BPDB & ors 6 SCOB [2016] HCD 56	Bangladesh Power Development Board Order, 1972, Article 2; Doctrine of estopple	It appears from Clause-(d) of Article-2 of P.O. 59 of 1972 that the term "Government" has been specifically defined therein. According to the said provision, "Government" means the Government of the People's of Bangladesh. Clause-(h) of Article-2 further provides that "Power Board" means Bangladesh Power Development Board as constituted by the said PO 59 of 1972. The very definition of these two terms clearly indicates the intention of the Legislature in that the Legislature wanted to keep these two terms separately with separate definitions.
136.	6	2016	Md. Yousuf Ali Akon & ors Vs. BIWTA & ors. 6 SCOB [2016] HCD 66	Legitimate expectation	In the advertisement dated 19.01.2004, the authority has given an express promise to that effect that the appointee shall be on a probation period of 1 (one) year and after satisfactory completion of the said probationary period, the appointee shall be absorbed and therefore, the petitioners' legitimate expectation arises. The petitioners successfully made out a case of legitimate expectation. The petitioners had a legitimate expectation to be absorbed against the permanent posts on the basis of the advertisement published in the "Daily Observer" on 19.01.2004. In the background of the advertisement dated 19.01.2004, there was reasonable expectation of their being permanently absorbed in the post of Master Pilots.
137.	6	2016	Abdus Salam & ors. Vs. State 6 SCOB [2016] HCD 82	partisan witness; ocular evidence; medical evidence; Value of evidence by child witness	The ocular evidence of prosecution witnesses supported by post mortem report with regard to the injury no. 1 and 2 cannot be disbelieved. Further, the medical evidence is only corroborative in nature, in that view, the ocular evidence of the eye-witnesses, which substantially corroborates the injuries on the person of the deceased Rokshana, must be accepted.
138.	6	2016	Mahbub Ali Vs. Judge, Artha Rin Adalat & ors	Necessary parties in an Artha Rin Suit; Artha Rin	It appears that, admittedly, defendant no. 3-petitioner was neither a borrower

			6 SCOB[2016]HCD 102	Adalat Ain, 2003, Section 6;	nor guarantor and even nor a mortgagor relating to the loan liability and, therefore, he is not liable for repayment of the loan inasmuch as the petitioner does not come within the purview of sub-section (5) of section 6 of the Ain, 2003, wherein who will be the necessary party in the Artha Rin suit has been provided, and hence the suit ought to have been dismissed as against this defendant no. 3- petitioner.
139.	6	2016	Rashid & ors Vs. State & ors 6 SCOB[2016]HCD 108	Code of Criminal Procedure, 1898, Section 436;	The learned Sessions Judge, Sunamgonj appears to have fallen in error in law in directing the learned Judicial Magistrate to take cognizance directly inasmuch as from a mere reading of Section 436 of the CrPC, it appears that the learned Sessions Judge is not empowered to directly ask any Judicial Magistrate to take cognizance.
140.	6	2016	Md. Sadek Hossain & ors Vs. Most. Azmeri Begum and ors. 6 SCOB[2016]HCD 112	Evidence Act, 1872, Section 115	From a close reading of Section 115 of the Evidence Act ..., it is quite clear that the legislature does not allow a person from retracting or denying anything that which he might intentionally have said or done either verbally or by action or by omission and the consequence of which might have led some other person to rely on such as true or act upon such belief. This is as we find is clearly barred under the law. It is also significant to note that the bar is not confined to a particular type or class of suits but it applies to any suit or proceeding be it Civil or Criminal whatever may be the nature, class or category of the suit or proceeding. It is evident from perusal of the same that Section 115 in no way distinguishes or otherwise makes any distinction between Civil and Criminal Proceedings. From the language of Section 115 itself it is evident that it applies to all proceedings.
141.	6	2016	Musa Kalimullah Vs Secretary, WR, MoWD & ors 6SCOB[2016] HCD 124	Promotion; time scale	It transpires that for a Steno-Typist of the Board the post of Stenographer is a promotion post and the decision of promotion is to be made on the basis of merit through open competition in which serving Steno-Typists and outsiders may take part. It is true that the Petitioner had earlier drawn the benefits of 3 time-scales as a Steno-Typist. So, on being promoted as Stenographer he has become entitled again to get the benefits of a new-slot of time-scales subject to fulfilling essential conditions like- satisfactory service of 8, 12 or 15 years.
142.	5	2015	Md. Mijanur Rahman Vs. Bangladesh and ors (Zinat Ara, J) 5 SCOB [2015] HCD 1	Meaning of `A person in the service of the Republic or of any statutory public authority`; Administrative Tribunal	`A person in the service of the Republic or of any statutory public authority` includes a person who is or has retired or is dismissed, removed or discharged from such service but does not include a person in the defence services of Bangladesh or of the Bangladesh Rifles.
143.	5	2015	Md. Shariful Alam Vs Artha Rin Adalat & anr (Zubayer Rahman Chowdhury, J) 5 SCOB [2015] HCD 6	Artha Rin Adalat Ain 2003 Section 6	The language used in the section makes it clear that the plaint has to be filed along with an affidavit, both as to the statements made in the plaint as well as to the documents annexed with the plaint. Therefore, non-compliance with the mandatory requirement of law has rendered the plaint invalid in the eye of law and consequently, the impugned order passed by the learned Judge of the Adalat cannot be sustained in law.
144.	5	2015	Abdul Mazid @ Khoka & ors Vs. State & ors (Moyeenul Islam Chowdhury, J) 5 SCOB [2015] HCD 9	Evidence of interested witnesses; Section 342 and 537 of CrPC;	Evidence of interested witnesses: The rule that the evidence of interested witnesses requires corroboration is not an inflexible one. It is a rule of caution rather than an ordinary rule of appreciation of evidence.

145.	5	2015	Renuka Rani Mondol Vs Biswajit Mondol & anr (Borhanuddin, J) 5 SCOB [2015] HCD 33	Section 123 of Transfer of Property Act, 1872; Gift by a Hindu	Appellate court below allowed the appeal in part holding that the deed was not acted upon since there is no evidence that possession was delivered to the defendant no.1. This finding is not correct. Where the instrument of gift has been registered, delivery of possession is not essential for the validity of a gift by a Hindu.
146.	5	2015	Mrs. Hurun Nahar & ors Vs Mozammel Haque & ors (Krishna Debnath, J) 5 SCOB [2015] HCD 37	Code of Civil Procedure, 1908; Order 23, Rule1	During the course of pendency of original proceedings in the Trial Court, the Court may permit the plaintiff to withdraw the suit with liberty to file a fresh one, when there is a formal defect in the suit or for any other reason as provided, but such a right is not available to the plaintiff when there is already a judgment against him as aforesaid manner.
147.	5	2015	Coats Bangladesh Ltd Vs Commissioner, Customs Bond Com. & ors. (Sheikh Hassan Arif, J) 5 SCOB [2015] HCD 40	NBR; Show cause notice; closed-minded show cause notice	When a higher authority, namely the NBR, has expressed its opinion agreeing with the proposal sent by the earlier Bond Commissioner (Mr. Helal Uddin), it became very much difficult for the subsequent Bond Commissioner (Mr. Enayet) to go for any other option but to follow the proposal as was agreed upon by the NBR. This being so, this Court is of the view that, the show cause notice dated 25.05.2004 was in fact a closed-minded show cause notice. Therefore, giving reply to the such show cause notice, or attending a hearing pursuant to such show cause notice, became a mere formality for the petitioner. This view is further strengthened when we see the actions taken by the Bond Commissioner against the petitioner at the same time of issuance of the said show cause notice. When the Bond Commissioner requests other concerned authorities to suspend a license for all practical purposes, no reasonable reading can be done from such actions that the said show cause notice was in fact a closed-minded show cause notice inasmuch as that the concerned Commissioner had already decided the fate of the petitioner`s license.
148.	5	2015	State & ors Vs Syed A. Salam & ors (Bhabani Prasad Singha, J) 5 SCOB [2015] HCD 49	Section 340 of CrPC; Legal Remembrancer`s Manual, 1960 Chapter XII Paragraph no.6	An Advocate to defend an undefended accused charged with capital punishment should be appointed well in time of the commencement of trial of the case to enable him to study the case and the lawyer should be of sufficient standing and able to render assistance. The lawyer should be provided with the papers similar to that of the Public prosecutor.
149.	5	2015	Mrs. Sitara Siddiq Vs Bangladesh & ors. (Md. Ashraful Kamal, J) 5 SCOB [2015] HCD 57	Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 Section 7 and 8:	The application under sub-section (1) of section 7 shall contain the particulars as stipulated in Sub-section (1) of section 8 and also shall be accompanied by all the documents or the Photostat or true copies, as stipulated in Sub-section (2) of section 8 of the Ordinance No. LIV of 1985. In both the Sub-sections (1) and (2) of section 8 of the said Ordinance, the word `shall` has been used i.e. `shall contain` and `shall be accompanied. So the particulars in sub-section (i) and documents as per sub-section (2) of section 8 of the Ordinance are the essential condition in making an application under sub-section (1) of section 7 of the said Ordinance. Without any of the said particulars and documents, it is not possible to file an application under section 7 of the said Ordinance.
150.	5	2015	Shamsun Nahar Begum Shelly Vs. Bangladesh & ors (Mahmudul Hoque, J) 5 SCOB [2015] HCD 67	The Abandoned Buildings (Supplementary Provisions) Ordinance, 1985	The Government- Respondent never issued and served any notice upon the owner and the occupier under Article 7 of P.O. 16 of 1972 or under Section 5(1)

				Section 5(1)(b) And Article 7 of P.O. 16 of 1972; Natural justice	(b) of the Ordinance, 1985. Non-service of notice as required by law disentitled the Government-Respondent to claim that the property was legally declared abandoned and enlisted in the `Kha` list of the Abandoned Buildings. It is also noted that there is nothing on record to show that the Petitioner was ever asked to show cause about inclusion of the property or to surrender the same which has definitely denied the right of natural justice to the Petitioner.
151.	5	2015	Shoel Textile Mills Ltd & ors Vs Bangladesh & ors (Kashefa Hussain, J) 5 SCOB [2015] HCD 74	Bank Companies Act, 1991; Section 5 GaGa; Section 27 KaKa; loan defaulter; reschedules a loan	The moment a bank or any other financial institutions reschedules a loan or grants any kind of loan, credit facilities or any other sort of financial assistance infavour of any person, it is virtually an admission on its part that the person to whom such financial assistance is being granted is not a loan defaulter under the definition provided in Section 5 GaGa of Bank Companies Act,1991.
152.	5	2015	Jafri Soap and Chemical Ind. & ors Vs. Agrani Bank & ors (S.M. Mozibur Rahman, J) 5 SCOB [2015] HCD 79	Artha Rin Adlat Ain, 2003 Section 19,20,41,42	Without the provisions of Artha Rin Adalat Ain, 2003 any question regarding any proceedings initiated or any order, judgment or decree passed by the Judge of the Artha Rin Adalat cannot be raised in any court or to any authority and no court or authority will take cognizance or accept any application praying for any remedy filed in any court or authority ignoring the said provisions of section 20 of the Artha Rin Adalat Ain, 2003.
153.	5	2015	Rahima Begum VS. The State (Md. Farid Ahmed Shibli, J) 5 SCOB [2015] HCD 84	Penal Code, 1860 Section 201, 302/34; Code of Criminal Procedure, 1898; Section 236 and 237; Motive;	There might be, as it appears, some animosity or hostility between the accused-appellant`s husband Ali Haider and the deceased`s father Abdur Rashid. But there was no such enmity between the accused-appellant and deceased`s father or mother. In view of the facts above and evidence given by the prosecution, it is beyond our comprehension as to how and on the basis of which the learned Session Judge became convinced with and relied upon the prosecution case of killing Rabbi by the accused-appellant. Since there was no such reason for the accused-appellant to have any motive of killing an innocent minor boy of only 3 1/2 years old, it seems to us hardly possible to believe in the alleged charge of causing death of Rabbi by the accused-appellant.
154.	5	2015	Motiur Rahman @ Moitta & ors Vs. The State (Amir Hossain, J) 5 SCOB [2015] HCD 91	Section 19A and 19(f) of the Arms Act, 1878; Exclusive control and possession	The person from whose exclusive control and possession arms and ammunition are found is the only person to be liable.
155.	5	2015	Ramesh Chandra Das & ors Vs. Sureshwar Mazumdar & ors (Khizir Ahmed Choudhury, J) 5 SCOB [2015] HCD 96	Section 106 of Transfer of Property Act	The defendant forfeited their right to stay in the suit properties by denying the title of the plaintiffs and as such the contents of the notice or any purported facts are insignificant here. Because if someone denies title of the land lord, notice under section 106 of the Transfer of Property Act may be dispensed with. Consequently the decision referred in 51 DLR 393 is not applicable here. On the other hand the case reported in 1 BLC AD 156 as reported by Mr. A.M. Amin Uddin has got semblance with the present case.
156.	5	2015	Roli Chamka Vs Kantiomy Chakma & ors (Md. Iqbal Kabir, J) 5 SCOB [2015] HCD 101	Section 64 of the রাঙামাটি পার্বত্য জেলা স্থানীয় সরকার পরিষদ আইন, ১৯৮৯	In our examination it is also found that opposite party received the money, executed a bainapatra and delivered the possession of the schedule land in question and the defendants has no objection to transfer the land by register deed in favour of the plaintiff- petitioner through the Court. The law of this area does not create any bar to transfer the land to the present petitioner. Prior approval is required only for those to transfer the lands who are not

					inhabitant of the same hill district. Moreover, we have also found that government pleader has no authority to file the suit on behalf of the Deputy Commissioner.
157.	4	2015	Md. Mahbub Alam Vs. The State 4 SCOB [2015] HCD 1	561A of the Code of Criminal Procedure; Inherent power	The allegations as made in the first information report do not disclose any offence against the petitioner. Interference of this Court in exercise of its inherent power under section 561A of the Code of Criminal Procedure before framing charge is justified only when this Court finds, as in the present case, that the allegations as made in the first information report or charge sheet do not constitute the offence alleged against the accused or that on admitted facts no case can stand against the accused.
158.	4	2015	Karnaphuli Industries Ltd Vs The Commissioner of Taxes State 4 SCOB [2015] HCD 4	Income Tax Ordinance 1984, Section 83(2); Audi Alterm Partem	The DCT concern did not comply the provision of section 83(2) before opining that the claimed expenditure has not been adequately evidenced by the assessee applicant. Therefore it appears that the disallowance of expenditure has not only violated the provision of section 83(2) of the Income Tax Ordinance 1984, but also violated the time honored maxim Audi Alterm Partem which obliged a adjudicator to allow adequate opportunity of being head or to submit adequate representation. Accordingly this court finds merit in these seven Income Tax Reference Applications.
159.	4	2015	Shamsur Rahman Vs. Zhang Yu & ors State 4 SCOB [2015] HCD 12	Company Act, 1994, Section 20 & 87(2); EGM; Relationship between the Articles and the law	It is also found that attempts at the EGM held on 20.11.2013 to introduce changes in Article 14, thereby, facilitating the induction of the Respondent No.3 as a director, were equally unwarranted in law and irregular in form. Notably further, this EGM was held upon notice on 10.11.2013 to adopt a special resolution, thereby, falling far short of the statutory twenty-one days' notice requirement mandated under Section 87(2) of the Act. That in turn exposes the Company to violation of Section 20 of the Act that authorizes alteration of the Articles by special resolution but only by necessary adherence to the notice period requirement of Section 87(2).
160.	4	2015	Alvi Spinning Mills Ltd & ors Vs. Bangladesh & ors State 4 SCOB [2015] HCD 23	Letter of Credits; contract of sale; case of fraud	The decisions referred to above consistently spelt out that when an irrecoverable Letter of Credit issued / opened and confirmed by the bank such a bank is left with no option but to respect its obligation under the letter of credit and pay if the draft and documents are found to be in order and terms and conditions of such L/C satisfied.
161.	4	2015	Gazi A.K.M. Fazlul Haque & ors Vs. Privatization Commission & ors State 4 SCOB [2015] HCD 42	Article 102 of the Constitution; Privatization Commission (Officers and Employees) Service Regulations, 2002; right to be considered for promotion; Selection Committee; deputation	Only seniority is not the sole yardstick for promotion of any officer of the Commission to the next higher post. Along with his seniority, merit of the officer shall be taken into consideration for promotion to the next higher post by the Selection Committee/DPC. In case of promotion of a Deputy Director to the post of Director of the Commission, he must have completed a minimum of 5(five) years service and his service record must be satisfactory and free from any blemish or stain. If no Deputy Director having the requisite service length and satisfactory service record is available for promotion, only in that event, the post of Director of the Commission may be filled up by deputation.
162.	4	2015	Md. Shajahan Bhuiyan & ors Vs. Md. Nurul Alam & ors State 4 SCOB [2015] HCD 52	State Acquisition and Tenancy Act 1950, Section 86; diluvion; lawful right to lease out	Section 86 of the Act, 1950 clearly provides that a land that has diluvated before the of P.O No. 135 of 1972 (i.e. after April 1956) or that will diluvate in

					future shall vest in the Government. It follows that irrespective of what ever title or right was acquired by Oli Ullah from the D.S. recorded tenant Zinnat Ali by virtue of the unregistered patta dated 28.1.1931 (Exhibit-ka) and the three rent receipts for the years 1341 to 1362 D.S (Exhibit-Ga-series) it had extinguished as a result of diluvion that took place some time before 1965 i.e. before the Diara Map. It follows that the Government has acquired lawful right to lease out the land that was earlier recorded as D.S. plot No.1657 and 1658.
163.	4	2015	State & ors Vs. Md. Saiful Islam & ors State 4 SCOB [2015] HCD 61	Code of Criminal Procedure, 1898 Section 103; Madak Drabbya Niontran Ain, 1990, Section 36 and 37; search and seizure	Strict non-compliance of section 103 of the Code in order to search and seizure of madak articles either from a person or any place will not render the case unbelievable.
164.	4	2015	BSRM Steels Ltd. & ors. Vs NBR & ors. State 4 SCOB [2015] HCD 80	Income Tax Ordinance, 1984, Section 53 and 82C; Advance payment of income tax; final discharge of tax liability; deduction of tax	According to sub-section (3) of the said Section 53, the importers are given credit for such advance payment of income tax during their assessment of tax in the concerned assessment year. Not only that, according to Section 82C as quoted above, such deduction shall even be deemed to be the final discharge of tax liability of an assessee-importer from that source. Therefore, since the source in the present case in respect of the petitioners is the source of importation of scrap vessels by the ship breaking industries, or sometimes by the petitioners themselves, and there is no dispute that at the time of importation of the scrap vessels AIT were deducted in view of the provisions under Section 53, the said deduction of tax shall be deemed to be the final discharge of liability from that source in view of Clause (g) sub-section (2) of Section 82C of the said Ordinance.
165.	4	2015	Md. Selim Mollah Vs. Bangladesh & ors State 4 SCOB [2015] HCD 86	Druto Bichar Ain, 2002, Section 6; public interest; objective satisfaction	Alongside the five categories of cases, the Government in the public interest can transfer any pending case at any stage of trial to Druto Bichar Tribunal. A question may still arise as to when this particular provision of law gives authority on the Government to transfer any pending criminal case at any stage of trial to any Druto Bichar Tribunal, why five categories of cases relating to the offence of murder, rape, firearms, explosive substances and drug are required to be specifically mentioned. Here the necessity of objective satisfaction on the part of the Government arises as to which cases other than the cases of those five categories are to be transferred in what public interest, and without any objective satisfaction recorded to that effect transfer of any other case to the Tribunal constituted under the Ain is not permissible. The concerned officials of the Ministry of Home Affairs must be careful and expressive in sending any case other than the cases of five categories specifically mentioned in section 6 of the Ain.
166.	4	2015	BBC Vs. Registrar, DPDTM & ors State 4 SCOB [2015] HCD 89	Trade Marks Act, 2009, Section 24 & 30; priority of use of trade mark; action for passing off	Section 30 of the Trade Marks Act, 2009 provides that priority of use of this mark gets paramount consideration compared to registration. The right created in favour of a registered proprietor of a trade mark is not an absolute right and is subservient to other provisions of the Act. In other words, registration of a trade mark does not provide a defence to the proceedings for passing of as under section 24 of the Act, 2009. A prior user of trade mark can maintain an action for passing off against any subsequent

					user of an identical trade mark including a registered user thereof.
167.	4	2015	Md. Forhad Hossain Sheikh Vs. The State State 4 SCOB [2015] HCD 102	Circumstantial Evidence; Burden of proof in wife killing case;	Commission of crime can also be proved by circumstantial evidence. Circumstantial evidence is more cogent and convincing than the ocular evidence. It is correctly said that witnesses may tell a lie and it is not difficult to procure false tutored and biased witnesses but it is very much difficult to procure circumstantial evidence.
168.	4	2015	Kazi Mazharul Islam Vs. Bangladesh & ors State 4 SCOB [2015] HCD 115	Article 36 of the Constitution of Bangladesh;	If the government is allowed to restrict a person from going abroad at its discretion, then Article 36 of the Constitution will become nugatory. This Court being the guardian of the Constitution cannot condone such practice.
169.	4	2015	Kazi Md. Salamatullah & ors Vs. Bangladesh & ors State 4 SCOB [2015] HCD 117	Court-conduct of the learned Advocates; norms and etiquettes of the legal profession	Court is well empowered to oversee the professional performance and also to regulate the Court-conduct of the learned Advocates and, in an appropriate case, impose costs upon a learned Advocate for finding his conduct to be unbefitting with the norms and etiquettes of the legal profession. Accordingly, instead of referring this incident to the Bar Council towards drawing up proceedings against the learned Advocate for the petitioners, we are taking a lenient view by warning him with an expectation that this kind of incident shall never be repeated by him in future.
170.	4	2015	Syed Aynul Akhter Vs. Sanjit Kumar Bhowmik & ors State 4 SCOB [2015] HCD 127	Evidence Act, 1872, Section 91 and 92; Code of Civil Procedure, 1908, Order XIV Rule 1; Oral evidence; Documentary evidence; Issue not taken up earlier	We are surprised that the Courts below did not take these rent receipts into any consideration at all and which are relevant documentary evidences. Instead, as is obvious from their findings, the Courts below have erroneously and unlawfully relied upon oral evidences bypassing the documentary evidences and which they are barred from doing under the law. Section 91 and 92 of the Evidence Act expressly bar the reliance upon oral evidences where documentary evidences are there on record.
171.	4	2015	State & ors Vs. Rafiqul Islam & ors State 4 SCOB [2015] HCD 139	Penal Code, 1860, Section 302; Last seen together theory; Retraction of confession	According to the prosecution, in the morning of 05.06.2008 all accused persons with the victim Mamun alive were last seen together at the Gate of Rafique's house no. Ka-109/4, Kureel Bishwaroad and at that time P.W.3 i.e. the Darwan himself saw them coming out together from that house. After they were last seen together, the dead body of the victim was found at an open place of Bholanathpur by the Esapur River on 07.06.2008. In such a situation it is the burden of the accused persons to prove and explain as to how the victim had been taken and done to death there.
172.	4	2015	Shuvash Chandra Das Vs. Customs, Excise & VAT App. Tribunal & ors State 4 SCOB [2015] HCD 171	VAT Act, 1991, Section 37 & 55; Determining amount of evaded VAT; Opportunity of hearing	A notice under section 37 of the VAT Act cannot be issued without first determining the amount of evaded VAT if any. In doing so the authority have to issue notice under section 55(1) of the VAT Act 1991, claiming the evaded VAT and after giving an opportunity of hearing to the party concern, determine the amount of evaded VAT, under section 55(3) of the VAT Act 1991. After such determination of evaded VAT if the defaulter fails to repay the evaded VAT, only then, can proceed under section 37 along with other provisions of the VAT Act.
173.	3	2015	First Appeal No.464 of 2012 Citation: 3 SCOB [2015] HCD 1	Registration Act,1908 Section 22A Lunacy Act, 1912 Section 18	In view of the aforesaid amendment vide Registration Act,1908 (Act No.XXV of 2004) there is hardly any scope left for anyone to raise a question of forgery of a registered document since the

					photographs of both the executants are pasted on every instrument and the parties shall sign and put their left impression across their photographs in the instrument. More so, it is no bodies case that the photographs available in the impugned instrument or Heba deed is not the photographs of Kazi Shahidul Islam the father of the plaintiff Nos.1-3 and 5. Under such circumstances the allegation of forgery of the document in question can safely be brushed aside.
174.	3	2015	Writ Petition No. 6324 of 2013 & Suo Moto Rule No. 19 of 2013 (Arising out of WP No. 6324/13). with Writ Petition No. 6791 of 2013. Citation: 3 SCOB [2015] HCD 13	Khulna University Act 1990 Section 28 (5):	When the law specifically used the words `প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে এবং ভাইস চ্যান্সলর কর্তৃক নির্দিষ্ট ভাবে অধ্যাপকদের মধ্যে উহার ডীন পদ আবর্তীত হইবে` we hold that the post of Dean will rotate firstly among the Disciplines, according to its seniority of being set up/established, and then also among the senior Professors of each Discipline of the school. Thus so far the two interpretations given by the two Ministries are concerned we are of the view that the subsequent interpretation dated 06.03.2013 given by the Ministry of Education is more rational, reasonable and acceptable for the purpose interpretation of section 28 (5) of the Act.
175.	3	2015	I.T. Ref: Application No. 306 of 2013 With I.T. Ref. Application No. 307 of 2013 With I.T. Ref: Application No. 308 of 2013 And I.T. Ref: Application No. 309 of 2013 Citation: 3 SCOB [2015] HCD 21	Income Tax Ordinance 1984 Section 75, 93, 94	A return filed under the normal procedure of section 75 of the Income Tax Ordinance 1984 has to be assessed within the period of limitation of six month, so also the ropening procedure against deemed assessment under the Self Assessment Scheme has to be confined to the period of limitation of two years. No proceeding for assessment of any return can be taken after the period for limitation and any such proceeding initiated shall be a nullity.
176.	3	2015	WRIT PETITION NO. 144 OF 2008 Citation: 3 SCOB [2015] HCD 37	Constitution of Bangladesh Article 102 Commercial contract Statutory contract Arbitration	The writ petition is not maintainable on two counts,- firstly, due to the reason that the dispute arose out of simple commercial contract and not out of statutory contract and secondly, there is no scope to avail writ jurisdiction as there is an equal efficacious alternative forum to settle the dispute through amicable settlement under clause 54.1, adjudication under clause 54.2 and arbitration under clause 54.3 of section 3 of the GCC between the parties.
177.	3	2015	WRIT PETITION NO. 2515 of 2012 Citation: 3 SCOB [2015] HCD 42	Constitution of Bangladesh Article 40 Cancellation of license Right of the citizen	In the case in hand cancellation of license was indeed an unbridled arbitrary outcome of executive feat which certainly had indulged in excesses. The act has a curtailing effect upon Article 40 of the Constitution in particular. It has flouted Article 40 of the Constitution directly. The Constitution being the Supreme law of the land the framers of the same in their wisdom have made some provisions protecting the right of the citizen. To do lawful business or trade subject to restriction of law is one of those provisions which cannot be curtailed or throttled in any manner by any authority.
178.	3	2015	Writ Petition No. 8967 of 2014 Citation: 3 SCOB [2015] HCD 47	Abandoned Buildings (Supplementary Provision) Ordinance, 1985 Court of Settlement Barred by limitation	In our view, the petitioner had rightly approached the Court of Settlement, Dhaka for releasing the property in question from the Kha list of Abandoned Buildings. However, as his case was found to be barred by limitation and since he had no other equally efficacious remedy to enforce his rights, the petitioner was entitled to invoke the writ jurisdiction.
179.	3	2015	Civil Revision No. 706 0f 1998	Deed of gift Physical possession Paper transaction	There is nothing on record to show that Promoth Nath was a man of unsound mind or that plaintiff had any

			Citation: 3 SCOB [2015] HCD 59		relationship with Promoth Nath whatsoever so as to take him to the Sub-Registry office and to fraudulently get the kabala executed by Promoth Nath. Defendants never raised any question on this aspect in any manner. The above statement of the executant considered with the rent receipts showing payment of rent for the suit land by the plaintiff for the years 1981 to 1994 and the fact of silence of the two sons of Promoth Nath (defendant No.1 and 2) in not challenging plaintiff`s kabala and the fact of physical possession of the plaintiffs lead me to conclude that plaintiffs` purchase is genuine and that their kabala dated 07.06.1980 was acted upon and that the earlier deed of gift dated 10.01.1979 purportedly made by Promoth Nath in favour of his son was a mere paper transaction so far the suit land is concerned.
180.	3	2015	Civil Revision No. 879 of 2006 Citation: 3 SCOB [2015] HCD 68	Final court of fact Reassess the evidence Findings of the trial court	The appellate court being last and final court of fact will have to discuss and reassess the evidence on record independently while reversing or affirming the findings of the trial court. In case of reversal it is more incumbent upon the appellate court to reassess the evidence to arrive at his own independent finding. The findings of the trial court should not be easily disturbed as a matter of course and before reversing the findings and decisions of the trial court the appellate court should think twice or more than twice.
181.	3	2015	Death Reference no. 50 of 2010 Citation: 3 SCOB [2015] HCD 74	Penal Code, 1860 Section 302 How to attach weight to the testimony of witness	Sentencing discretion on the part of a Judge is the most difficult task to perform. There is no system or procedure in the Criminal Justice administration method or Rule to exercise such discretion. In sentencing process, two important factors come out- which shall shape appropriate sentence (i) Aggravating factor and (ii) Mitigating factor. These two factors control the sentencing process to a great extent. But it is always to be remembered that the object of sentence should be to see that the crime does not go unpunished and the society has the satisfaction that Justice has been done and court responded to the society`s cry for Justice. Under section 302 of the Code, though a discretion has been conferred upon the Court to award two types of sentences, death or imprisonment for life, the discretion is to be exercised in accordance with the fundamental principle of criminal Justice.
182.	3	2015	ADMIRALTY SUIT NO. 17 of 2015 Citation: 3 SCOB [2015] HCD 93	Trade Marks Act, 2009 Section 102	When rectification proceeding is pending before this court, Suit for infringement of Trademark pending in the Court below should be stayed in view of Section 102 of the Trade Marks Act, 2009.
183.	3	2015	WRIT PETITION NO. 3203 of 2004 Citation: 3 SCOB [2015] HCD 108	Value Added Tax Act, 1991 Section 9 Clause-Gha of Rule 22(1) of the VAT Rules, 1991	Since the admitted allegation against the petitioners is that in spite of the increase of price of the raw materials as reflected from the concerned bills of entries and assessment orders thereon, the petitioners did not make any corresponding increase in the declared price of the finished products and since such circumstance was not evidently mentioned under any clauses from Clauses-`Ka` to `Ta` under sub-section (1) of Section 9, we do not find as to how the directions of the concerned officers for readjusting the current account register of the petitioner, or for depositing certain amount through treasury challan, was amenable to the alterative remedy of written objection in

					view of the provisions under sub-section (2ka) of Section 9.
184.	3	2015	Criminal Appeal No. 1041 of 1997 Citation: 3 SCOB [2015] HCD 116	Case of drug/narcotics Chemical examination Chemical expert	In the present case being a case of drug/narcotics, it was incumbent on the prosecution to get the seized phensedyl examined by a chemical expert to prove that the seized articles were actually madak drobyo/drug and under what category of madak drobyo/drug it fell. Absence of such chemical examination and contradictions between the two sets of prosecution witnesses, casted a shadow of doubt over the prosecution case.
185.	3	2015	Criminal Revision No.263 of 2012 Citation: 3 SCOB [2015] HCD 119	Druta Bichar Tribunal Act, 2002 Section 10	In this case remarkably the government does not deny the fact of failure of conclusion of trial of the Druta Bichar Tribunal Case No.07 of 2006 within the stipulated time. As per the provision of section 10 of the Druta Bichar Tribunal Act, 2002, the trial of a Druta Bichar Tribunal Case is to be concluded within 135 days from the date of receipt of the case for trial. No option for the court is left therein except sending the case back to the original court in the event of failure on the part of the tribunal to conclude trial of the case within the stipulated period.
186.	3	2015	Criminal Appeal No. 300 of 1998 Citation: 3 SCOB [2015] HCD 122	Evidence Act, 1872 Section 3 Evidence of business partners	There is no reason why the evidence of the business partners should be discarded simply because they belonged to a construction firm. They came before the Court and testified to the occurrence. They were fully cross-examined by the defence. Their evidence is also evidence with the meaning of Section 3 of the Evidence Act. The prosecution witness Nos. 2, 4, 6 and 7 are material witnesses though they are business partners of the P.W. No. 5, the informant but cannot be considered as interested witness. There is no reason that the testimony of P.W. Nos. 2, 4, 5, 6 and 7 can be discarded or liable to be flung to the wind simply because they happened to be business partners.
187.	3	2015	Writ Petition No. 3709 of 2015 Citation: 3 SCOB [2015] HCD 132	Code of Civil Procedure, 1908 Section 136; Order XXXVIII, Rule 5 Attachment	The Court below has power to order attachment of property situated beyond the local limit of the Court. But the Court passing the Order of attachment cannot directly attach property outside its own jurisdiction and it can only ask the Court in whose jurisdiction the property actually situated to carry out the order of attachment and complete the formalities of attachment. In the present case this Court finds that the Impugned Order passed by the Adalat was sent directly by the Court without sending the same to the District Court for compliance where the property situates. Therefore, the Impugned Order from the face of it is found to be palpably illegal and invalid in law as contained in Section 136 of the Code.
188.	3	2015	WRIT PETITION NO.28 of 2015 Citation: 3 SCOB [2015] HCD 137	VAT Act, 1991 Section 55 and 56	Section 56 cannot be construed or interpreted in an isolated manner. Section 55 and 56 must be read together and from a perusal of the same, it is evident that Section 56 is mandatorily preceded by Section 55 of the VAT Act,1991 which prescribes the issuance of a Show- Cause Notice followed by other procedures and which is exhaustively laid out in the whole Section. The prescription said out in Section 55(1) (2)(3) are mandatory and no action or initiative can be taken or resorted to for realization of any unpaid, less paid or otherwise evaded etc amount, whatsoever under the provisions of Section 56 of the VAT Act, 1991, unless and until firstly the procedure laid out in Section 55 of the

					VAT Act has been exhausted by the authorities concerned. The principle of law is that Section 56 automatically presupposes a notice under section 55(1) of the Act, followed by the procedure laid out in Sub-section 2 & 3 of the said section 55 and which the respondents cannot avoid under any circumstances.
189.	3	2015	Writ Petition No. 846 of 2012 Citation: 3 SCOB [2015] HCD 143	Constitution of Bangladesh Article 102; Doctrine of the legitimate expectation	Doctrine of the legitimate expectation ensures the circumstances in which, the expectation may be ensured or denied and among others the following grounds may also be taken in order to get a remedy under article 102 of the Constitution:- firstly there must be a promise or assurance from the employer or the authority that the incumbent would be assimilated at the end or during the tenure of his service; secondly - the past practice of `আত্মীকরণ` for other persons of similar status has been followed consistently.
190.	3	2015	WRIT PETITION N0. 10011 of 2013 & WRIT PETITION N0. 10023 of 2013 Citation: 3 SCOB [2015] HCD 150	Writ of certiorari Certiorari jurisdiction	In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has jurisdiction over a subject- matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an Appellate Court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.
191.	3	2015	Criminal Revision No.132 OF 2012 Citation: 3 SCOB [2015] HCD 158	Penal Code, 1860 Section 161 Prevention of Corruption Act, 1947 Section 5(2)	The offence under section 161 of the Penal Code relates to take illegal gratification by any public servant, while offence under section 5(2) of Act II of 1947 speaks of criminal misconduct by the same if he by corrupt and illegal means abusing his position as public servant obtains for himself any pecuniary advantage. The offences of the above sections are quite different and a person may be punished in each section separately and independently.
192.	3	2015	WRIT PETITION NO. 8925 OF 2012 Citation: 3 SCOB [2015] HCD 52	Constitution of Bangladesh Article 102 and 42 অর্পিত সম্পত্তি প্রত্যর্পন আইন, 2001: Alternative remedy Protection of fundamental right	It is a settled proposition of law that an aggrieved party may invoke the writ jurisdiction of the High Court Division under Article 102 of the Constitution straightaway provided the action impugned is malafide, even though there may be an alternative remedy available for him. Since we have found that the inclusion of the case property in `Ka` Schedule of the Gazette Notification dated 06.05.2012 as a vested property is malafide, the instant writ petition, as we see it, is maintainable. Besides, it has been clearly, categorically and unequivocally held in the decision in the case of the Government of Bangladesh represented by the Ministry of Works and another Vs Syed Chand Sultana and others reported in 51 DLR (AD) 24 that the writ-petitioners can come directly to the High Court Division for protection of their fundamental right, even though an alternative remedy is available. So our definite finding is that the petitioners can come directly to the High Court Division for protection of their right to property as contemplated by Article 42 of the Constitution of Bangladesh, even though an alternative forum, that is to say, অর্পিত সম্পত্তি প্রত্যর্পন ট্রাইব্যুনাল is available for necessary legal redress.
193.	3	2015	ফৌজদারী বিবিধ মামলা নং 20859/2010, Citation:3 SCOB [2015] HCD 98	ফৌজদারী কার্যবিধি ৫৬১এ ধারা	ফৌজদারী কার্যবিধি ৫৬১এ ধারার বিধান অনুযায়ী দন্ডিত আদেশ বাতিলের ক্ষেত্রে তিনটি বিষয়ই বিবেচনায় প্রাধান্য পাইবে, যথা : "আইগত সাক্ষ্য প্রমাণের অভাব" এবং "আদালত গঠনে ত্রুটি" (Quoram-non-

					judice) এবং "আইনের অপব্যবহার যাহার ফলে ন্যায় বিচার ব্যাহত"।
194.	2	2015	WRIT PETITIONS NO. 9366 of 2011, 9341 of 2011, 8220 of 2011, 9367 of 2011, 9368 of 2011, 9369 of 2011, 9370 of 2011, 2600 of 2012, 5076 of 2012, 5077 of 2012, 5078 of 2012 & 5818 of 2012. Citation: 2 SCOB [2015] HCD 1	Negotiable instrument Holder in due course Consideration Dishonored Cheque Lawful custody Fraud	Until the contrary is proved, it will be presumed that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated, or transferred, was accepted, endorsed, negotiated or transferred for consideration. Section 118(g), however, provides that the holder of a negotiable instrument is a holder in due course; provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.
195.	2	2015	CRIMINAL REVISION NO.433 OF 2003 Citation: 2 SCOB [2015] HCD 18	Alter or amend charge Guilty under lower section	The Court under section 227 of the Code of Criminal Procedure is competent to alter or amend the charge at any stage of the proceeding before pronouncement of judgment. Since section 302 of the Penal Code is not applicable even after framing a charge under section 302 of the Penal Code, there is no legal bar to find the accused guilty under lower section of 304 Part II of the Penal Code on proper examination of the facts, circumstances and evidence of the case.
196.	2	2015	Criminal Misc. Case No. 19511 Of 2012 Citation: 2 SCOB [2015] HCD 21	Quashing criminal proceeding Delay in lodging FIR Inherent jurisdiction Section 561A	There is no dispute that the F.I.R. has been lodged with a delay of about four years. But, according to the F.I.R. as well as the Criminal Miscellaneous Application, the informant is a Korean woman and she received the copies of forged documents long after from the investigating officer of a previous case. Moreover, delay by itself is no ground for quashing the criminal proceeding.
197.	2	2015	WRIT PETITION NO. 9147 of 2008 Citation: 2 SCOB [2015] HCD 27	Banking Companies Act 1991 Credit Information Bureau Defaulter borrower Financial institution Elementary principle of Company law	The process of enlistment of any defaulter name in the CIB list is a continuing process within the meaning of section 5 GaGa read with section 27 KaKa of Banking Companies Act 1991 and also read with Article 42 of Bangladesh Bank Order 1972. If all these provisions are read together one and only inference that could be made is that if any person or a company is indebted to in any manner with any financial institution and the debt remains unpaid, it is the duty of the respondent Bangladesh Bank in its turn to enlist the name of the incumbent in the CIB list nothing more nothing less.
198.	2	2015	Writ Petition No. 735 of 2007 Citation: 2 SCOB [2015] HCD 32	Administrative actions Scale of fairness Arbitrarily Duty of a lawyer	Administrative actions by Government and statutory bodies should be judged on the scale of fairness. In other words, no authority can act arbitrarily and whimsically in discharging its duties, thereby affecting the rights and privilege of the property of an individual.
199.	2	2015	Writ Petition No. 9150 of 2007 Citation: 2 SCOB [2015] HCD 36	Anti-Corruption Commission Act, 2004: Section 420 of the Penal Code Malice Bad faith	Section 2(Umo) of the Act contemplates that ‘c‘e‘ba‘ means the offences mentioned in the schedule of the Act. It is an indisputable fact that the alleged offences were not scheduled offences of the Act at the relevant point of time. So the question of enquiry into the alleged offences by the respondent no. 3 is out of the question. What we are driving at boils down to this: the respondent no. 3 was not empowered to enquire into the alleged offences, but none the less, he enquired thereinto. Furthermore, it is an admitted fact that the enquiry report submitted by the respondent no. 3 was treated as an ejahar by the concerned Police Station

					which gave rise to the instant case. In this regard, Mr. Md. Khurshid Alam Khan has candidly conceded that the treatment of the enquiry report as an ejahar is not sustainable in law. This being the panorama, we feel constrained to hold that the very initiation of the case is ‘de hors’ the law.
200.	2	2015	CIVIL REVISION NO. 4636 OF 2004 Citation: 2 SCOB [2015] HCD 41	Pre-emption Co-sharer by purchase Statutory period Tenants	When an application has been made under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, and the tenants holding lands contiguous to the land transferred may within the period referred to in sub-section (1) or within two months of the date of service of notice of the application under clause (b) of sub-section (3) which ever be earlier apply to joint in the said application; any co-sharer tenant or tenant holding land contiguous to the land transferred, who has not applied either sub-section (1) or under this sub-section, shall not have any further right to get pre-emption under this section.
201.	2	2015	CIVIL REVISION NO. 3384 OF 2001 Citation: 2 SCOB [2015] HCD 44	Identifiable plot Advocate Commissioner’s report Injunction	Requirement of law is that the property should be identified by boundaries or numbers. When the plots are identified by numbers, boundaries are not necessary. The identifiable plot numbers having been given with total quantum of land against each plot in the schedule of plaint, there is no difficulty in identifying land of the plots.
202.	2	2015	Civil Revision No. 1622 of 2010 Citation: 2 SCOB [2015] HCD 47	Right in special law Barring Clause Settlement	The general remedy of the suit under section 9 of the Code of Civil Procedure will be impliedly barred where a right is created by a special law and special forum is provided in it.
203.	2	2015	WRIT PETITION NO. 9490 OF 2013 Citation: 2 SCOB [2015] HCD 54	Lawyer’s Certificate Binding Force of Judgment Truth and Accountability Commission (TAC)	A judgment or order becomes effective (subject to correction of error or review by the same Court, as the case may be) the moment it is pronounced in the open Court. A certificate to that effect issued by a learned lawyer is sufficient proof to the parties or persons concerned, according to the law declared in 44 D.L.R. (AD) 219. Besides, as per provisions of article 111 of the Constitution of the Peoples Republic of Bangladesh, the judgment passed by the Appellate Division is binding on the High Court Division too, alongwith the subordinate Courts. Hence, if the Appellate Division pronounces any judgment then it becomes binding on the High Court Division (in similar cases), whether the same is signed or not. If the High Court Division considers it just and proper to wait till the judgment is pronounced by the Appellate Division to be signed, then it (HCD) can at best keep the matter awaiting judgment. But, it should not pronounce any judgment contrary to the judgment pronounced, in the open Court, by the Appellate Division, on the matter having relevance to the case before this Division. However, to cover this interim period, this Division may pass such interim order as the ends of justice may demand.
204.	2	2015	ADMIRALTY SUIT NO. 17 of 2015 Citation: 2 SCOB [2015] HCD 58	Refund of the Court fees Benefit from filing of the suit	The parties are entitled to refund of the Court fees if it is found that the apparatus of the Court and its process have not been used for the cause for which the parties have taken recourse to the proceedings of the Court. This underlining principle of the Court Fees Act as well as the provisions under sub-Section (11) of Section 89A of the Code have also been recognized and affirmed in the cases as referred to by Mr. Hannan, in particular the case of Bhola

					v. Sardar Muhammad, PLD 1976 Lahore 1268.
205.	2	2015	Writ Petition No. 11346 of 2014 Citation: 2 SCOB [2015] HCD 62	Article 102 of the Constitution Aggrieved person Clean hands	The above conduct of the petitioner, as to non-disclosure of pendency of the representation before the Board, clearly suggests that he attempted to suppress the said fact before this Court and obtained this Rule by misleading the Court for which he deserves to be penalised. An aggrieved person, who wishes to come to this Court for seeking any remedy, must come with clean hands without attempting to hide any fact inasmuch as this Court in exercising the jurisdiction under Article 102 of the Constitution carries out its duty as an extra ordinary forum, unlike the other ordinary Courts. This Court, in essence, is an equity Court, for, the State has provided this provision in the Constitution for adjudication upon the bonafide claims of the citizens who will not have any forum, including civil Court, tribunal or a quasi-judicial body, for vindication of their rights. If a citizen seeks to abuse the said provision, this Court not only turns down his petition, but also penalises him.
206.	2	2015	Writ petition No. 12211 of 2012 Citation: 2 SCOB [2015] HCD 66	Legitimate Expectation Public interest Change in the policy	On the basis of several decisions passed by our Apex Court, now it has been established that generally the legitimate expectation may arise- I. if there is an express promise given by a public authority; or II. because of the existence of a regular practice which the claimant can reasonably expect to continue; III. Such an expectation must be reasonable. However, if there is a change in the policy or in the public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.
207.	2	2015	WRIT PETITION NO. 8152 OF 2009 Citation: 2 SCOB [2015] HCD 70	Article 102 of the Constitution Discretionary Power	Now it is well settled that the power of the High Court to issue an appropriate writ under Article 102 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and lethargic. If there is inordinate delay on the part of the Petitioner in filing a Writ Petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustice.
208.	2	2015	WRIT PETITION N0. 8068 of 2005 Citation: 2 SCOB [2015] HCD 73	Retrospective operation Legislative intent Customs Act Rate of duty Tariff value Imported goods	The question whether a statute operate retrospectively, or prospectively only, in one of legislative intent. In determining such intent, courts observe a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes, or amendments thereof, enacted by it, to operate prospectively only and not retroactively. However, a contrary determination will be made where the intention of the legislature to make the statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown by necessary implication or terms which permit no other meaning to be annexed to them, and which preclude all question in regard thereto, and leave no reasonable doubt thereof.
209.	2	2015	First Appeal No. 77 of 2006 Citation: 2 SCOB [2015] HCD 77	Insurance claim Contract Awarding compensation	Regarding the claim (No.viii) we find that the accident has taken place during the contract period and thereafter he took treatment and failed to succeed as

					a result he suffered a lot and finally he lost one of his legs, which was also held within the time frame of contract and MoU and claims was made within stipulated time mentioned in MoU. So there is nothing wrong to get the benefit of the insurance claim.
210.	2	2015	WRIT PETITION NO. 3606 of 2010 With WRIT PETITION NO.1909, 12357, 12358, 7980, 7982, 9355, 7979, 5175, 7981, 3184 and 7766 of 2013; 3210 of 2009; 991 of 2012; 6056, 227, 2672, 1192, 335, 7768, 1956 and 5065 of 2014 Citation: 2 SCOB [2015] HCD 84	VAT Act Third party authority Purported exercise of discretion Demand of documents	No provision of the said Act of 1991 empowers the VAT authority to direct the petitioner as a VAT registered person to deliver any documents or records directly to any third party authority, i.e. Local and Revenue Audit Directorate. Neither a notice can be issued either directing and deposit of revenue or under section 55(1) of VAT Act on that Count.
211.	2	2015	WRIT PETITION NO. 2412 OF 2007 Citation: 2 SCOB [2015] HCD 95	Power to make appointment Foreign Exchange Regulation Act, 1947 Section 3 Section 16 of the General Clauses Act	According to Section 16 of the General Clauses Act, where, by any Act of Parliament or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. As the suspension of licence is not there in Section 3 of the Act of 1947, in our opinion, the provisions of Section 16 of the General Clauses Act can definitely be invoked in order to give a complete and harmonious interpretation of Section 3 of the Act of 1947. What we are driving at boils down to this: the authority making any appointment has the power to suspend the licence of any person appointed.
212.	2	2015	WRIT PETITION NO. 3716 OF 2014 Citation: 2 SCOB [2015] HCD 99	Enquiry committee Show cause notice	We have also consulted the rules and, in our considered opinion, a show cause notice, as required under clause (Ka) of Rule- 5.4 giving 7 days time to explain the allegations brought, if any, and further asking, in the same notice, the petitioners as to whether they were willing to appear before the enquiry committee were mandatory on the part of the respondents and such notices ought to have been issued upon the petitioners. We also find that, as per clause (Kha) of Rule 5.4, it is also mandatory that appointing authority should form a 3(three) members enquiry committee and the enquiry committed shall dispose of the disciplinary proceedings, if initiated, within 60 days. But, we find nothing on record to show that any notice was issued upon the petitioners or any enquiry committee was formed required by clause (Kha) or clause (Kha) of Rule 5.4 of the said rules and the impugned memo was not issued following the procedure laid down in clauses (Ka) and (Kha) of Rule 5.4.
213.	1	2015	Income Tax Reference Application No. 159 of 2011Rule No. 53(Ref.) of 2011With Income Tax Reference Application No. 160 of 2011 Rule No. 54(Ref.) of 2011 With Income Tax Reference Application No. 161 of 2011 Rule No. 55(Ref.) of 2011 With Income Tax Reference Application No. 162 of 2011 Rule No. 56(Ref.) of 2011	Commercial purpose Fiscal law Notification exempting or reducing income tax	The income of the assessee-university/the assessee-college ought to have been treated as tax exempted under SRO No. 178 for the assessment years 2002-2003, 2004-2005, 2005-2006, 2006-2007 and 2007-2008 by the Taxes Authority and the Tribunal.
214.	1	2015	Writ Petition No. 11442 of 2014	Section 216 (1)(Chha) of the Bangladesh Labour Act 2006	We fail to understand how the learned Chairman of the Labour Appellate Tribunal, Dhaka could entertain the appeal of respondent no. 3 in the very first place when, admittedly, there was no judicial order under challenge. In our view, the appeal before the Labour Appellate Tribunal itself was absolutely misconceived and therefore not maintainable at all.

215.	1	2015	Writ Petition No. 11959 of 2013	Writ of Certiorari Disciplinary proceedings	the appellate authority can hear any appeal preferred against any order by an aggrieved employee and the appeal need not be confined to matters arising out of disciplinary proceedings only
216.	1	2015	Contempt Petition No.264/2010. (Arising out of Writ Petition No.7694/2010)	Contempt of Court Court of record	The impugned comment constituted the offence, because; (1) by this comment the contemnor purported to usurp the function of this Division, (2) the comment has the potential of influencing the minds of the people at large as well of the judges, whether or not it actually generated that effect, (3) the comment amounted to prejudging the cause which was awaiting adjudication, (4) the comment was vibrant enough to lead the public as well as the judges concerned to reckon that by issuing the Rule and passing th
217.	1	2015	Death Reference No.36 of 2010	Single witness Relationship of the witness with the victim	The case of prosecution does not depend on the number of witnesses produced but it can depend upon a single witness whose evidence (testimony) is trustworthy, credible and unimpeachable. Therefore, obviously we can easily draw such inference in this matter that the case of the prosecution can stand very much on a single evidence if it is tangible and credible.
218.	1	2015	Criminal Revision No. 906 of 2010 with Criminal Revision No. 907 of 2010 with Criminal Revision No. 908 of 2010 and Criminal Revision No. 909 of 2010	Corroboration of evidence Presumption against prosecution	Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post dated given as a security for repayment of the money as alleged by the accused or any other cheque issued by the drawer from encashment currently. The legislature has not made any difference between a post dated cheque issued as security and a cheque issued for encashment currently. I do not see any scope of making any such difference.
219.	1	2015	Criminal Appeal No. 4103 of 2012	Motive Culpable homicide	In the absence of any motive, conspiracy, pre-plan or pre-meditation on the part of accused-appellant Muslim while inflicting injuries resulting the death of the victim 7 days after the occurrence, we find that the accused-appellant Muslim had no intention to commit murder but he committed the offence of culpable homicide not amounting to murder.
220.	1	2015	Criminal Appeal No. 6691 of 2011 With Criminal Appeal No. 6692 of 2011	Instrument drawn for consideration Holder in due course Rebuttable presumption	Whenever any accused leads the evidence to rebut such presumption the burden again shifts to the complainant who is the holder in due course of the chque to proof by the legal evidence that the cheque was drawn in his favour for consideration.
221.	1	2015	Writ Petition No. 6220 of 2007	Locus Standi	We find that that the petitioner Samity does not have any locus-standi to move the writ petition to ventilate the causes of its aggrieved members since it is not a public purpose, rather the purpose for the benefits of individual members of the samity who have individually bought the land and thereafter formed the samity, and as such, we do not find the instant Rule maintainable.
222.	1	2015	WRIT PETITION NO. 5210 of 2013	Stopping payment by Bank UCP-600 Re-imbursement in respect of the accepted bills	A bank under the law and banking practice, in particular in accordance with the relevant provisions of UCP-600, is bound to make payment or re-imbursement in respect of the accepted bills once they are accepted by the issuing banks, and in view of the said provisions of the UCP-600, namely Article-16, once such acceptance is given, the matter is closed and the concerned banks are precluded from raising any issue thereafter.
223.	1	2015	Criminal Revision No.329 of 2006 With Criminal Revision No.334 of 2006	Public servant Sanction from the Government to prosecute	A Member of Parliament is not a `public servant` within the meaning of section 21 of the Penal Code or section 2 of the

			With Criminal Revision No.335of 2006With Criminal Revision No.336 of 2006 With Criminal Revision No.337 of 2006		Act II of 1947. We, therefore, accept the submission advanced by the learned Advocate for the petitioner only to the extent that in order to prosecute opposite party 2, no sanction from the Government was required.
224.	1	2015	Criminal Miscellaneous Case No.26782 of 2014	Prima-facie case Seized articles Incriminating article	On perusal of the FIR of the case, it appears that there is no specific allegation or overt act against the accused-petitioner therein which shows that no prima-facie case is revealed against the accused-petitioner. The column no.5 of the charge-sheet of the case in respect of any seized articles shows that said column is blank meaning thereby that no incriminating articles although the case is under sections 3/4 of the Explosive Substances Act, 1908.
225.	1	2015	Writ Petition No. 9204 of 2013 With Writ Petition No. 9205 of 2013	Aggrieved person Writ of certiorari	গ্যাস বিপনন নিয়মাবলী, 2004 has no compelling or binding effect upon the petitioners since admittedly the same is not law or has no force of law. Therefore, a nexus between the petitioners` grievance and Clause 5.7 of the গ্যাস বিপনন নিয়মাবলী, 2004 by itself cannot be established that the petitioner can seek remedy under Article 102 (2) (a) (ii) of the Constitution.
226.	1	2015	Writ Petition No. 5420 of 2014	Record-of-rights Revenue Officers Administrative functionaries Mutation case	The moment the Revenue Officer would come to know, either through an enquiry conducted by him with the assistance of the Tahshilder or any other staff of his office, or through an application filed by a private party for mutation, that there are disputes regarding the produced papers and documents and there are contending claimants over any land and the matter is pending in the Court for disposal, the concerned Revenue Officer must not proceed further with regard to the said mutation case until the said civ
227.	1	2015	Writ Petition No. 6328 OF 2003	Property of the borrower Third-party mortgagors	In the event of execution of a decree for realization of decretal amount the court shall proceed with the property of the borrower first and then the property of the third-party mortgagors.
228.	1	2015	Civil Revision No. 4430 of 2011	Consequential order Penal interest	Bangladesh House Building Finance Corporation Loan Regulations, 1977 and 1996: Under both the repealed Regulations, 1977 and Regulations, 1996 the BHBFC is permitted to charge simple interest on all loans, not the penal interest.
229.	1	2015	Civil Revision No. 940 of 2013	Correction of Evidence Inherent power of the Court Alternative remedie	Discretionary power of a court as has been inserted in Section 151 of the Code of Civil Procedure, 1908 cannot be exercised where alternative remedies are available. After administering oath in the open court when the evidence of a witness is recorded by a trial court it cannot be discarded or changed or corrected in the form of modification except recalling the witness following the prescribed provision of law enunciated in the Evidence Act, 1872.
230.	1	2015	WRIT PETITION N0. 3843 of 2004	Chittagong Hill-Tracts Regulation	It is now established that all civil suits will be triable from 1st July, 2008 by the Joint District Judge of the respective 3(three) Hill-Tract Districts and the parties aggrieved thereto may prefer an appeal before the learned District Judge of the respective Hill-Tract Districts and as such, any person aggrieved by the judgment and decree passed by the learned District Judge may prefer civil revisional application before the High Court Division under section 115 of the Code of Civil Procedure 1908
231.	1	2015	Criminal Miscellaneous Case No.49814 OF 2014	Expiry of the statutory period	If the trial of a Druto Bichar Tribunal case is not concluded within the time stipulated in sub-section (1), (2) and (3)

					of section 10, it shall be sent back to the Court wherefrom the case was transferred.
232.	1	2015	WRIT PETITION NO. 13689 OF 2012	The principles of natural justice Procedural fairness Ultra vires Legitimate expectation	From promise or from established practice, a duty to act fairly and thus to comply with natural justice may arise. Thus the concepts of `fairness` and `legitimate expectation` have expanded the applicability of natural justice beyond the sphere of right.
233.	1	2015	Writ Petition No. 2640 of 2011	Bill of Lading Unpaid Seller`s Lien	In the present case petitioner submitted an ocean bill of lading issued by EXCALIVOR LOGISTICS who is a freight forwarder and agent. Therefore, as per Article 1(a) of schedule of the Carriage of Goods Sea Act, 1925, EXCALIVOR LOGISTICS is neither an owner nor a chatterer of the vessel and had no authority to issue any bill of lading. So, the bill of lading placed by the petitioner was not a bill of lading as per Article-1 (a) of schedule of `The carriage of goods by Sea Act, 1925.`
234.	1	2015	Criminal Miscellaneous Case No.17553 OF 2006	Juvenile Court	In dealing with the Juvenile Case it is bound to follow the provisions of law as laid down in sub-section 2 of section 7 of the Act, 1974 and Rule 4 of the Rules 1976, i.e., either it has to sit in a building or room different from that in which the ordinary sittings of the Court are held, or on different days or at different times from those at which the ordinary sittings of the Court are held. It means that at least the case should be tried at different times even on the same day than that of other cases of ordinary jurisdiction.
235.	1	2015	Criminal Miscellaneous Case No. 33311 of 2011	Forged document Produced in a Civil court 561A of CrPC	In a proceeding where a forged document has been used, the Court concerned should make the complaint. Since the alleged forged document has been filed in a Civil Court, it is for the concerned Civil Court to lodge any complaint before the Criminal Court if it finds any forgery relating to the said document.

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